v. 2463

No. 11547

United States

Circuit Court of Appeals

For the Ninth Circuit.

COMMISSIONER OF INTERNAL REVENUE,

Petitioner,

vs.

RAINIER BREWING COMPANY,
A Corporation,

Respondent.

Transcript of Record

Book of Exhibits
In Five Volumes
Volume III
Pages 605 to 788

Upon Petitions to Review a Decision of the Tax Court of the United States.

Rotary Colorprint, 870 Brannan Street, San Francisco

No. 11547

United States

Circuit Court of Appeals

For the Ninth Circuit.

COMMISSIONER OF INTERNAL REVENUE,

Petitioner,

vs.

RAINIER BREWING COMPANY,
A Corporation,

Respondent.

Transcript of Record

Book of Exhibits
In Five Volumes
Volume III
Pages 605 to 788

Upon Petitions to Review a Decision of the Tax Court of the United States.

Rotary Colorprint, 870 Brannan Street, San Francisco

INDEX PAGE

INDEX PAGE

INDEX PAGE

INDEX PAGE

PETITIONER'S EXHIBIT No. 1

This Agreement, made and entered into this 23rd day of April, 1935, by and between Rainier Brewing Company, Inc., a California corporation (hereinafter for convenience termed "Rainier"), party of the first part, and Century Brewing Association, a Washington corporation (hereinafter for convenience termed "Century"), party of the second part,

Witnesseth:

Whereas, Rainier Brewing Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California, with its principal office for the transaction of business located in the City and County of San Francisco, in said State; and

Whereas, Century Brewing Association is a corporation organized and existing under and by virtue of the laws of the State of Washington, with its principal office for the transaction of business located in the City of Seattle, in said State; and

Whereas, Rainier is engaged in the manufacture of beer, ale, alcoholic malt beverages, and other products, with plants located in the City and County of San Francisco, State of California, and in the City of Seattle, County of King, State of Washington, and sells and distributes its products in the eleven western states, the Territories of Alaska and Hawaii, and elsewhere; and

Whereas, Century is engaged in the manufacture of beer and other malt products and is operating a plant in the City of Seattle, State of Washington,

Petitioner's Exhibit No. 1—(Continued)

and markets its products in the States of Washington and Oregon, and the Territory of Alaska and elsewhere; and [631]

Whereas, Rainier and its predecessors in interest have for many years sold and marketed products in the State of Washington and in the Territory of Alaska under the trade names or brands of "Rainier" and "Tacoma," and said names or brands are well and favorably known in said State and Territory as a result thereof; and

Whereas, Century desires to acquire the plant and certain of the personal property of Rainier located in the City of Seattle, State of Washington, by purchase, and to secure, by royalty contract, the sole and exclusive perpetual right and privilege of manufacturing and marketing beer, ale and other alcoholic malt beverages under the trade names and brands "Rainier" and "Tacoma" within the State of Washington and the Territory of Alaska; and

Whereas, Rainier is willing to sell said plant and certain of its personal property and to grant said perpetual right and franchise upon the terms and conditions and for the considerations hereinbelow set forth;

Now, Therefore, for and in consideration of the mutual promises and covenants herein contained, and of the payment to Rainier by Century of the considerations herein agreed to be paid, the parties hereto agree as follows:

Petitioner's Exhibit No. 1—(Continued)

Purchase Agreement

First: Rainier hereby sells to Century, and Century hereby purchases from Rainier, all of the property hereinbelow described, to-wit:

(a) All the following described property situate in the City of Seattle, County of King, State of Washington:

A tract of land comprising portions of tracts 8 and 9 of the Julius Horton tracts recorded in Vol. 3 of Plats, page 171, records of King County, Washington, also an unplatted [632] tract of land situated in the L. M. Collins Donation Claim lying between the easterly line of said tract 8 of the Julius Horton tracts and the northerly line of former Nora Street in Sprague's Addition to the City of Seattle as recorded in Vol. 7 of Plats, page 49, records of King County, Washington, also portion of vacated Nora Street as vacated by Ordinance No. 78 City of Georgetown, also portion of Block 1, Sprague's Addition and vacated alley in said block, also vacated portion of Juneau St. as vacated by Ordinance No. 35490 City of Seattle, the boundaries of said tract of land are more particularly described as follows:

Commencing at the monument marking the intersection of the west line of the said Julius Horton Tracts and the center line of Duwamish Avenue; then S. 34° 23′ 39″ E. along said center line 187.95 feet; thence N. 55° 36′ 21″ E. 30 feet to

Petitioner's Exhibit No. 1—(Continued)

the easterly margin of Duwamish Ave. and the true place of beginning; thence S. 34° 23′ 39″ E. along said easterly margin 1449.08 feet; thence continuing along the northerly margin of Duwamish Ave., S. 66° 47′ 45″ E. 38.19 feet; thence S. 70° 45′ 24″ E. 44.91 feet to the northwesterly margin of the unvacated portion of Juneau Street, as the same is set forth in Ordinance No. 35490 of Seattle; thence N. 55° 41′ 06″ E. 123.86 feet along said Juneau Street margin; thence S. 80° 22′ 34″ E. 33.58 feet along the northerly margin of Juneau Street; thence N. 53° 41′ 06″ E. 7.18 feet along said margin of Juneau Street; thence N. 36° 18′ 54″ W. 1472.41 feet to point of curve; thence to the right on a curve of 5977.22 feet radius 64.85 feet; thence S. 55° 36′ 21″ W. 151.00 feet to the place of beginning.

Together with the tenements, hereditaments, and appurtenances thereunto belonging or appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereon; and

(b) Twenty-five hundred (2500) half barrel beer containers to be selected by representatives of each of the parties hereto from the half barrel beer containers belonging to Rainier and located in the territory hereinafter described. [633]

Second: In consideration of the transfer by Rainier to Century of the property hereinbefore described, Century agrees to pay Rainier the sum of Two Hundred Fifty Thousand Dollars ($250,000.00)

Petitioner's Exhibit No. 1—(Continued)

in lawful money of the United States of America, as follows:

Two Hundred Thousand Dollars ($200,000.00) on or before the 27th day of May, 1935;

Twenty-five Thousand Dollars ($25,000.00) on or before the 27th day of May, 1938; and

The remaining Twenty-five Thousand Dollars on or before the 27th day of May, 1939;

said amounts to be evidenced by the promissory notes of Century, dated as of the date hereof, bearing interest at the rate of five per cent (5%) per annum until paid; said interest to be payable annually.

Third: It is understood and agreed by and between the parties hereto that the real property hereinabove described is subject to the lien of a Deed Trust executed by the predecessor in interest of Rainier to secure bonds issued and outstanding; and that said property can be released from the lien of said Trust Indenture only upon obtaining the unanimous consent of the holders of said bonds issued and outstanding. Rainier agrees that upon the payment of the sum of Two Hundred Thousand Dollars ($200,000.00) hereinabove agreed to be paid, it will cause a portion of said bonds to be called for redemption and will obtain the consent of the holders of the remaining bonds to the release of said property from the lien of said Trust Indenture, and will at such time transfer said property by good and sufficient warranty deed free and clear

Petitioner's Exhibit No. 1—(Continued)

of all liens and encumbrances save and except easements, [634] rights of way, or other covenants, if any, running with the land; taxes and insurance upon said property to be prorated as of the date of transfer. Century, on its part, agrees that simultaneously with the receipt of said deed, it will execute and deliver to Rainier a mortgage upon said property to secure payment of the two promissory notes, each in the sum of Twenty-five Thousand Dollars ($25,000.00), hereinbefore referred to; and to further secure the payment of the royalties in the manner and to the extent hereinafter in this agreement set forth.

Fourth: It is understood and agreed by and between the parties hereto that Rainier may remove from the property herein sold any and all machinery and equipment not affixed to the realty, and may remove any and all personal property not purchased by Century as herein provided.

Fifth: Rainier agrees to sell, and Century agrees to buy, the following personal property located within the territory hereinafter described:

(a) Twenty-five thousand (25,000) cardboard cases of twenty-four (24) empty eleven (11) oz. bottles, each at forty cents (40c) per case;

(b) Any and all beer on hand as of July 1st, 1935, or prior effective date of the royalty agreement hereinafter contained, which inventory Rainier agrees to maintain at a reason-

Petitioner's Exhibit No. 1—(Continued)

able minimum; and which said products shall be purchased, together with the containers, by Century at Rainier's cost;

(c) Any and all dealers' helps and other sales material on hand on July 1st, 1935, which shall be purchased by Century at Rainier's cost; and

(d) Any and all office fixtures and equipment, which shall be purchased by Century at depreciated book value. [635]

Sixth: It is understood and agreed that certain portions of the real property hereinabove described are occupied by tenants under leases heretofore executed by Rainier or its predecessor in interest, or under month to month tenancies; and that Century shall accept title to or possession of said property subject to any and all rights of tenants in possession. Formal assignments of Rainier's interests under any and all such leases shall be executed and delivered to Century as of the date of transfer of title to said real property, and rents shall be prorated between the parties hereto as of said date.

Licensing Agreement

Seventh: Rainier hereby grants to Century the sole and exclusive perpetual right and license to manufacture and market beer, ale, and other alcoholic malt beverages within the State of Washington and the Territory of Alaska under the trade names and brands of "Rainier" and "Tacoma,"

Petitioner's Exhibit No. 1—(Continued)

together with the right to use within said State and Territory any and all copyrights, trademarks, labels, or other advertising media adopted or used by Rainier in connection with its beer, ale, or other alcoholic malt beverages.

Eighth: In consideration of said perpetual right and license, Century agrees to pay to Rainier in cash, lawful money of the United States, a royalty amounting to seventy-five cents (75c) per barrel (consisting of 31 gallons) for every barrel of beer, ale, or other alcoholic malt beverages sold or distributed in the State of Washington and the Territory of Alaska under the said trade names or brands of "Rainier" and "Tacoma," up to a total of one hundred twenty-five thousand (125,000) barrels annually, and [636] eighty cents (80c) per barrel for all such products distributed within said territory annually in excess of said amount of one hundred twenty-five thousand (125,000) barrels; provided, however, that the minimum annual amount to be so paid by Century to Rainier shall be the sum of Seventy-five Thousand Dollars ($75,000.00), which said amount is herein termed "minimum annual royalty." Said payments shall be made in lawful money of the United States as follows:

For the year commencing July 1st, 1935, and ending June 30th, 1936, said minimum annual royalty shall be paid in two installments; the first installment amounting to Thirty-seven Thousand Five Hundred Dollars ($37,500.00) shall be paid on the 31st day of December, 1935, and the remaining in-

Petitioner's Exhibit No. 1—(Continued)

stallment amounting to Thirty-seven Thousand Five Hundred Dollars ($37,500.00) shall be paid on the 30th day of June, 1936. Thereafter said minimum annual royalty shall be payable in four (4) equal quarterly payments amounting to Eighteen Thousand Seven Hundred Fifty Dollars ($18,750.00) each, payable on October 1st, January 1st, April 1st, and July 1st of each year, commencing with October 1st, 1936.

Any and all royalties payable annually in excess of the minimum royalties hereunder shall be paid by Century to Rainier on the 1st day of August of each and every year commencing with the 1st day of August, 1936, which said royalties shall be calculated upon the gross sales for the contract year beginning on the 1st day of July and ending on the 30th day of June immediately preceding the date of payment.

Century agrees that on or before the 15th day of each and every month during the period of time that this agreement remains in force, commencing with the 15th day of [637] August, 1935, it will deliver to Rainier a statement certified to by an authorized officer of Century, showing the gross sales of beer, ale and other alcoholic malt beverages under the said trade names or brands of "Rainier" and "Tacoma" for the calendar month immediately preceding the date of such statement.

Century further agrees that annually on the 1st day of August of each year, commencing with the 1st day of August, 1936, it will deliver to Rainier

Petitioner's Exhibit No. 1—(Continued)

a statement prepared by Price, Waterhouse & Co., or other Certified Public Accountants acceptable to Rainier, showing the sales of beer, ale and other alcoholic malt beverages under the trade names or brands of "Rainier" and "Tacoma" for the contract year commencing July 1st and ending June 30th immediately preceding the date of such statement.

Rainier shall have the right, at its own cost and expense, to examine the books, records and accounts of Century for the purpose of verifying any such statement so submitted to determine the accuracy thereof.

Ninth: Rainier agrees that during the period of time this agreement remains in force, it will not manufacture, sell or distribute, within the territory herein described, directly or through or by any subsidiary company or instrumentality wholly owned or substantially controlled by it, beer, ale, or other alcoholic malt beverages, or directly or indirectly enter into competition with Century in said territory. It is understood and agreed, however, that Rainier shall have the sole and exclusive right to manufacture, sell, and distribute non-alcoholic beverages within said territory under said trade names or brands of "Rainier" and "Tacoma" and any and all other trade names or brands that it owns and desires to use. [638]

Rainier agrees that during the period of time this agreement remains in force it will maintain in full force and effect Federal registrations of

Petitioner's Exhibit No. 1—(Continued)

said trade names or brands, "Rainier" and "Tacoma" and will likewise maintain in full force and effect the present registration of said trade names or brands within the State of Washington and Territory of Alaska. Should Rainier fail to so maintain its rights under said trade names or brands, then and in that event Century shall have the right to pay any and all amounts necessary to so maintain said trade names or brands for and in the name of Rainier, and shall be entitled to deduct any and all amounts so paid from the royalties then due or thereafter becoming due under this agreement.

Tenth: Century agrees that any and all beer, ale, or other alcoholic malt beverages manufactured by it pursuant to this agreement and marketed under said trade names and brands of "Rainier" and "Tacoma" shall at all times be of a quality at least equal to the quality of similar products then manufactured and marketed under said trade names and brands by Rainier; and shall be manufactured under the same formula used in the manufacture of similar products by Rainier, which formulae Rainier shall make available to Century.

Eleventh: It is understood and agreed by and between the parties hereto that should Century at any time be prevented from manufacturing, selling, and distributing beer, ale or other alcoholic malt beverages due to strikes, boycotts, fires, earthquakes or acts of God, for periods of time in excess of three (3) months, and as a result thereof Century shall

Petitioner's Exhibit No. 1—(Continued)

fail to earn a sufficient amount from the operation of its entire business to enable it to pay the royalty next due and payable under this agreement, then [639] and in that event, the time of payment of such royalty shall be deferred for a period of time equal and equivalent to the period during which such cause shall continue, but in no event beyond a date upon which Century has available sufficient funds to pay royalty payments that have accrued; provided, however, that during any such period when royalty payments shall be so deferred, Century shall apply all of its monthly net income derived from the operation of its entire business toward the payment of any royalties so due.

Should the citizens residing in any portion of the territory covered by this agreement elect to adopt local prohibition laws prohibiting the manufacture, sale, and distribution of beer, ale, or other alcoholic malt beverages in such community, and should Century, due to such laws, be unable to sell and distribute within the territory described in this agreement, beer, ale, and other alcoholic malt beverages manufactured under the trade names and brands of "Rainier" and "Tacoma" in a quantity at least equal to fifty-two thousand (52,000) barrels annually, then and in that event, the minimum royalty payable hereunder shall be reduced during the continuance of the operation of such laws by the percentage that the sales of such products under such trade names and brands of "Rainier" and "Tacoma" sold within that particular community

Petitioner's Exhibit No. 1—(Continued)

bear to the total sales of such products by Century under such brands within the entire territory covered hereby, which percentage shall be based upon the average sales of such products theretofore made hereunder.

It is further understood and agreed by and between the parties hereto that should Century at any time [640] be prevented from manufacturing, selling and distributing beer, ale, or other alcoholic malt beverages under the trade names and brands of "Rainier" and "Tacoma," in a quantity at least equal to fifty-two thousand (52,000) barrels annually, due to governmental action, war regulation, or general prohibitory laws adopted by the United States of America or the State of Washington, then and in that event Century shall have the option of terminating this agreement or submitting to arbitration, in the manner hereinafter provided, the question of adjusting the minimum royalties payable hereunder during the continuance of such restriction upon the operation of its business. In the event that Century elects to submit the matter to arbitration, it agrees to abide by any decision rendered by the arbiters, and to pay the minimum royalties so fixed, in the manner and at the times herein provided. Rainier agrees, in the event of such arbitration, to accept the royalties so fixed in satisfaction of the obligation of Century for such period.

Twelfth: Century agrees that upon acquiring title to the real property herein agreed to be sold to it by Rainier, it will, in addition to executing the

Petitioner's Exhibit No. 1—(Continued)

mortgage provided in paragraph Third hereof, execute and deliver to Rainier such document or documents as Rainier shall deem necessary to cause said real property to stand as security for the prompt and faithful compliance by Century of all of its obligations under this agreement, to the end that should Century default in the performance of its obligations under this agreement, and should Rainier elect to terminate this agreement, then and in that event, title to said real property shall pass to Rainier, free and clear of all liens and encumbrances, as and for liquidated damages due to such default. [641]

Century further agrees that should it sell said property, it will, under written agreements satisfactory to Rainier, impound the proceeds received from such sale to the extent of Two Hundred Fifty Thousand Dollars ($250,000.00), or such sums as shall be realized on said sale, which said impounded funds shall thereafter stand as security for the prompt and faithful compliance by Century of all of its obligations under this agreement, and in the event of default, be transferred and delivered to Rainier as and for liquidated damages.

It is understood and agreed by and between the parties hereto that in the event of the default of Century hereunder, the termination of this agreement by Rainier, and the transfer or delivery to Rainier of said real property, or such impounded proceeds as liquidated damages, Rainier shall, in addition thereto, be entitled to recover any and all

Petitioner's Exhibit No. 1—(Continued)

royalties due and payable under this agreement at the time of the termination thereof, which said amounts Century agrees to pay upon demand.

Thirteenth: It is understood and agreed by and between the parties hereto that at any time after this agreement has been in force for five (5) years, Century shall have the right and option of electing to terminate all royalties thereafter payable hereunder by notifying Rainier of its election so to do, and by executing and delivering to Rainier the promissory notes of Century aggregating in principal amount the sum of One Million Dollars ($1,000,000) dated as of the date of the exercise of such option, bearing interest from date at the rate of five per cent (5%) per annum, which said promissory notes shall [642] be divided into five (5) equal maturities and shall be payable respectively on or before one (1), two (2), three (3), four (4), and five (5) years after the dates thereof.

Miscellaneous Provisions

Fourteenth: Century agrees that in the operation of its business during the period of time that this agreement remains in force, and from and after August 1st, 1935, it will purchase from Rainier such quantities of malt as shall be required by it in the manufacture of beer, ale, and other alcoholic malt beverages under the trade names and brands of "Rainier" and "Tacoma"; provided, however, that any such malt so purchased from Rainier shall be purchased upon terms and conditions

Petitioner's Exhibit No. 1—(Continued)

equally as favorable to Century for like quality malt as terms and conditions offered to it by other concerns selling malt within the territory herein described.

Fifteenth: Century agrees that during the period of time this agreement remains in force, it will use its best efforts to increase the volume of sales of beer, ale, and other alcoholic malt beverages manufactured and sold under the trade names and brands "Rainier" and "Tacoma" so that the same shall equal the volume of the sales of all other such products manufactured and sold by Century under other brands within the territory herein described. Century further agrees that during the first two (2) years that this agreement shall be in force, it shall expend for the purpose of advertising such beverages sold under the trade names and brands of "Rainier" and "Tacoma" an amount equal and equivalent to the sum expended by it during said period in advertising [643] all other beverages manufactured and sold by it under other brands within the territory herein described, and that thereafter and as long as this agreement shall remain in force, it will expend in the advertising of the products manufactured and sold under said trade names and brands "Rainier" and "Tacoma" an amount per barrel equal and equivalent to the amount per barrel expended by it in advertising other beverages manufactured and sold by it under any and all other brands within the territory herein described.

Petitioner's Exhibit No. 1—(Continued)

Sixteenth: Century agrees that it will, from time to time and when and as requested by Rainier, sell to Rainier, for distribution by Rainier outside of the territory herein described, products manufactured under said trade names and brands "Rainier" and "Tacoma," which said products shall be sold by Century to Rainier at the cost thereof to Century; and Rainier agrees that it will, from time to time and when and as requested by Century, sell to Century, for distribution by Century within the territory herein described, products manufactured by it in its San Francisco plant under said trade names and brands of "Rainier" and "Tacoma," which said products shall be sold by Rainier to Century at the cost thereof to Rainier. Provided, however, that neither party shall have the right to request delivery of, or purchase, products hereunder in an amount in excess of the surplus products then available for sale by the other party.

Seventeenth: It is understood and agreed by and between the parties hereto that Rainier either owns or controls in excess of a majority of the issued and outstanding shares of the capital stock of Seattle [644] Brewing & Malting Co., a West Virginia corporation, which said corporation is qualified to do business within the State of Washington. Rainier agrees to cause said corporation to amend its Articles or Certificate of Incorporation so as to change its name, and to cause a certified copy of such amended Articles or Certificate of Incorporation to be filed with the Secretary of the State of

Petitioner's Exhibit No. 1—(Continued)

the State of Washington, to the end that Century may either cause a new corportion to be organized under said name, or change the name of Century to Seattle Brewing & Malting Co.

Eighteenth: It is understood and agreed by and between the parties hereto that Rainier, in the conduct of its business within the territory herein described, is obligated under two contracts, one executed between Rainier and Hertz Drivurself Stations, Inc. (Pacific) relating to the automotive equipment now operated out of Rainier's Seattle plant, and the other executed between Rainier and Foster & Kleiser and relating to advertising within the territory herein described. Said agreements and any and all rights thereunder are hereby transferred and assigned to Century, effective July 1st, 1935, and Century hereby agrees to assume, satisfy and discharge any and all obligations of Rainier under such contracts arising from and after July 1st, 1935.

Nineteenth: Rainier will deliver to Century for collection all accounts receivable relating to the business of Rainier in the territory herein described existing on July 1st, 1935, and Century will use its best efforts to collect said accounts receivable, and will, [645] when and as payments are received thereon, deposit the same daily to the credit of Rainier in such bank or banks as Rainier shall direct, or otherwise account therefor daily to Rainier as Rainier shall direct.

Twentieth: Neither this agreement nor any of

Petitioner's Exhibit No. 1—(Continued)

its provisions shall become effective unless and until Century pays to Rainier the sum of Thirty-five Thousand Dollars ($35,000.00) in lawful money of the United States, which payment shall be applied upon the Two Hundred Thousand Dollars ($200,000) herein in paragraph Second agreed to be paid by Century on or before the 27th day of May, 1935. Upon this agreement becoming effective, the provisions contained in paragraphs First to Sixth, inclusive, hereof, relating to the purchase and sale of property, shall be and become effective immediately, and the remaining provisions, relating to the manufacture of products under the trade names and brands of "Rainier" and "Tacoma," shall become effective on July 1st, 1935; provided that said sum of Two Hundred Thousand Dollars ($200,000.00) shall have been paid on or before the 27th day of May, 1935.

Twenty-First: Should either of the parties hereto desire at any time to submit to arbitration any of the matters which are herein made the subject of arbitration, then and in that event, the party so desiring to submit to arbitration shall notify the other party in writing of its desires in that respect, stating therein the particular question to be so submitted to arbitration, and naming one arbiter. The party receiving such notice shall, within ten (10) days thereafter, select an arbiter and notify the [646] other party of the selection so made. Thereafter, the two arbiters so selected shall meet and select a third arbiter. The decision of such board

Petitioner's Exhibit No. 1—(Continued)

of arbitration upon any such question so submitted shall be final and binding upon the parties hereto.

Twenty-Second: In the event that Century shall fail to fully and promptly carry out the terms and provisions of this agreement or to pay, in the manner and at the times herein provided, the payments herein agreed to be paid by it, and such failure continues for a period of thirty (30) days after written notice to it by Rainier, then and in that event, such failure shall be and become an event of default, and Rainier shall cancel this agreement by written notice to Century. Upon Rainier so notifying Century any and all rights of Century hereunder shall immediately terminate and the liquidated damages, herein in paragraph Twelfth provided, shall be immediately transferred and delivered to, and become the property of, Rainier, without, however, in any way restricting the right of Rainier to enforce payment of any and all amounts then due it hereunder.

Twenty-Third: Except where the context otherwise clearly indicates, the term "contract year" as used herein shall mean a year commencing on the 1st day of July and ending on the 30th day of June of the following year; the term "Rainier" shall mean and include Rainier Brewing Company, Inc., its successors and assigns; the term "Century" shall mean and include Century Brewing Association, its successors and permitted assigns; and the terms "territory herein described" and "territory hereinafter described" shall mean [647] and include

Petitioner's Exhibit No. 1—(Continued)

the State of Washington and the Territory of Alaska.

Twenty-Fourth: This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that no rights of Century hereunder shall be assigned by it without the written consent of Rainier first had and obtained.

Twenty-Fifth: Time is of the essence of this agreement.

In Witness Whereof, the parties hereto have executed this agreement by their officers thereunto duly authorized, and have caused their corporate seals to be hereunto affixed, all as of the day and year first hereinabove written.

RAINIER BREWING COMPANY, INC.

By /s/ L. HEMRICH,
President.

By /s/ A. N. SPECHT,
Secretary,
Party of the First Part.

CENTURY BREWING ASSOCIATION.

By /s/ EMIL SICK,
Vice President.

By /s/ W. H. MACKIE,
Secretary,
Party of the Second Part.

Petitioner's Exhibit No. 1—(Continued)

State of California,
City and County of San Francisco—ss.

On this ..... day of April, 1935, before me, James F. McCue, a Notary Public in and for said City and County and State, residing therein, duly commissioned and sworn, personally appeared Louis Hemrich, known to me to be the President, and A. R. Specht, known to me to be the Secretary, respectively, of Rainier Brewing Company, Inc., one of the corporations that executed the within and foregoing instrument, and known to me to be the persons who executed the within and foregoing instrument on behalf of the said corporation, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] JAMES F. McCUE,
Notary Public in and for the City and County of San Francisco, State of California.

My commission expires February 25, 1938. [649]

State of Montana,
County of Missoula—ss.

On this 6th day of May, 1935, before me, the undersigned, a Notary Public for the State of Montana, personally appeared E. G. Sick, personally

Petitioner's Exhibit No. 1—(Continued)

known to me, and personally known to me to be the President of Century Brewing Association, the corporation that executed the within instrument, and acknowledged to me that said corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

[Notarial Seal] LILLIAN C. WENZEL,
Notary Public for the State of Montana, Residing at Missoula, Montana.

My commission expires Feb. 10th, 1936.

State of Washington,
County of King—ss.

On this 7th day of May, 1935, before me, J. A. G. Griffith, a Notary Public in and for said City and County and State, residing therein, duly commissioned and sworn, personally appeared W. H. Mackie, known to me to be the Secretary of Century Brewing Association, one of the corporations that executed the within and foregoing instrument, and known to me to be the person who executed the within and foregoing instrument on behalf of the said corporation, and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my

Petitioner's Exhibit No. 1—(Continued)

hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] J. A. G. GRIFFITH,
Notary Public in and for the City of Seattle, County of King, State of Washington.

My commission expires April 13th, 1938. [650]

At the Trustees meeting held on the 10th day of May, 1935, the following resolution was passed:

> Resolved, that the entry of this Corporation into that certain contract and agreement dated April 23rd, 1935, by and between the Rainier Brewing Company, Inc., a California Corporation, and this Corporation be and the same is hereby authorized and the act of the President and Secretary in executing the same in the name of the Century Brewing Association, a Corporation, be and the same is hereby authorized, ratified, confirmed and approved as the act and deed of this Corporation.

I, W. H. Mackie, Secretary of the Century Brewing Association, do hereby certify that the above resolution is an exact copy of the resolution duly adopted at the meeting of the Board of Trustees of the Century Brewing Association, duly held in Seattle, King County, Washington, on May 10th, 1935.

[Corporate Seal]

/s/ W. H. MACKIE.

Petitioner's Exhibit No. 1—(Continued)

Subscribed and sworn to before me this 10th day of May, 1935, at Seattle, Washington.

[Notarial Seal] J. A. G. GRIFFITH,
Notary Public in and for the State of Washington, residing at Seattle, Washington. [651]

PETITIONER'S EXHIBIT No. 2

Agreement

This memorandum of agreement, signed on behalf of Rainier Brewing Company, a California corporation, by I. E. Epstein, and on behalf of Seattle Brewing & Malting Company, a Washington corporation, successor to Century Brewing Association, by W. H. Mackie,

Witnesseth:

That whereas by a written contract dated April 23, 1935, Rainier agreed to sell and Seattle Brewing & Malting Company agreed to buy twenty-five thousand (25,000) cardboard cases of 24 empty 11 oz. bottles each, at forty cents (40c) per case and

Whereas there have been heretofore received on account of such sale thirteen thousand twenty-one (13,021) such cases, and it is the mutual desire of the parties that the contract for the delivery of the balance due upon said sale be modified in accordance with the understanding hereinafter expressed; and

Whereas there are out in the territory covered

by the State of Washington and the Territory of Alaska an unknown quantity of such empty 11 oz. bottles in the hands of customers who owe balances to Rainier, which said bottles, when and as received by Seattle Brewing & Malting Company will be accepted by Seattle on account of and in satisfaction of the balance of bottles to be received under the contract and which said bottles, it is understood, may be in excess of the balance to be received to accomplish the delivery of 25,000 cardboard cases of such empty bottles. [652]

Now, therefore, it is agreed between the parties that the Century Brewing Association, by its successor, Seattle Brewing & Malting Company, hereinafter referred to as Seattle, will presently pay to Rainier at 40c per case the amount due because of the delivery to it of 13,021 cases and that when and as empty bottles in cardboard cases of 24 empty 11 oz. bottles each are received by Seattle from customers owing balances to Rainier upon its books, Seattle will issue a credit memorandum in duplicate on forms to be furnished by Rainier at 40c per case, one copy of such credit memorandum being delivered to the customer and one copy to be mailed to the San Francisco office of Rainier and will, on or before the 10th day of the month following the month in which such bottles have been received and such credit memorandum issued, pay to Rainier the amount owing because of the issuance of such credit memorandums at 40c per case.

It is further understood that all other bottles received from Rainier customers other than those

from customers owing debit balances to Rainier will be by Seattle, credited on its books to its own accounts with such customers and such bottles will be retained by Seattle without liability to Rainier.

It is further understood that as a result of this modifying agreement no bottles are to be returned to Rainier from the Washington or Alaska territory and that this modifying agreement shall be as between the parties, considered a substitute for and a satisfaction of the obligation contained in the said contract of April 23, 1935, as to Paragraph Fifth (a) thereof. [653]

It is further understood and agreed that this modifying agreement shall not affect the provisions of Paragraph Fifth (b) of said contract but that all bottled beer taken by Seattle under the provisions of said paragraph shall be paid for at Rainier's cost both as to containers and contents.

In witness whereof the parties hereto have caused these presents to be executed this 1st day of July, 1935, at Seattle, Washington.

RAINIER BREWING
COMPANY,

By /s/ I. E. EPSTEIN,
Its Asst. Secy.,

SEATTLE BREWING &
MALTING COMPANY,

By /s/ W. H. MACKIE,
Its Secretary. [654]

PETITIONER'S EXHIBIT No. 3

This agreement, made and entered into this 18th day of July, 1935, by and between Rainier Brewing Company, Inc., a California corporation (hereinafter for convenience termed "Rainier"), party of the first part, and Seattle Brewing & Malting Company (formerly known as Century Brewing Association), a Washington corporation (hereinafter for convenience termed "Century"), party of the second part,

Witnesseth:

Whereas, the parties hereto made and entered into an Agreement, dated the 23rd day of April, 1935, wherein Rainier, in consideration of the payment of the amounts therein specified and the performance by Century of the covenants, agreements and conditions therein contained, agreed to sell to Century the real and personal property therein described, and granted to Century the rights and licenses therein set forth; and

Whereas, the parties hereto desire to amend and supplement said Agreement to the extent herein set forth;

Now, therefore, for and in consideration of the sum of Ten Dollars ($10.00), lawful money of the United States of America, in hand paid by Rainier to Century, receipt whereof is hereby acknowledged, and in further consideration of the premises and the covenants, promises and agreements herein contained, the parties hereto agree as follows:

(1) That, in order to correctly describe the real

Petitioner's Exhibit No. 3—(Continued)

property which Rainier agreed to sell to Century and Century agreed to buy from Rainier, paragraph First of said Agreement, which said paragraph now reads as follows: [655]

"First: Rainier hereby sells to Century, and Century hereby purchases from Rainier, all of the property hereinbelow described, to-wit:

(a) All the following described property situate in the City of Seattle, County of King, State of Washington:

A tract of land comprising portions of tracts 8 and 9 of the Julius Horton tracts recorded in Vol. 3 of Plats, page 171, records of King County, Washington, also an unplatted tract of land situated in the L. M. Collins Donation Claim lying between the easterly line of said tract 8 of the Julius Horton tracts and the northerly line of former Nora Street in Sprague's Addition to the City of Seattle as recorded in Vol. 7 of Plats, page 49, records of King County, Washington, also portion of vacated Nora Street as vacated by Ordinance No. 78 City of Georgetown, also portion of Block 1, Sprague's Addition and vacated alley in said block, also vacated portion of Juneau St. as vacated by Ordinance No. 35490 City of Seattle, the boundaries of said tract of land are more particularly described as follows:

Commencing at the monument marking the intersection of the west line of the said Julius

Petitioner's Exhibit No. 3—(Continued)

Horton Tracts and the center line of Duwamish Avenue; thence S. 34° 23′ 39″ E. along said center line 187.95 feet; then N. 55° 36′ 21″ E. 30 feet to the easterly margin of Duwamish Ave. and the true place of beginning; thence S. 34° 23′ 39″ E. along said easterly margin 1449.08 feet; thence continuing along the northerly margin of Duwamish Ave., S. 66° 47′ 45″ E. 38.19 feet; thence S. 70° 45′ 24″ E. 44.91 feet to the northwesterly margin of the unvacated portion of Juneau Street, as the same is set forth in Ordinance No. 35490 of Seattle; thence N. 53° 41′ 06″ E. 123.86 feet along said Juneau Street margin; thence S. 80° 22′ 34″ E. 33.58 feet along the northerly margin of Juneau Street; thence N. 53° 41′ 06″ E. 7.18 feet along said margin of Juneau Street; thence N. 36° 18′ 54″ W. 1472.41 feet to the point of curve; thence to the right on a curve of 5977.22 feet radius 64.85 feet; thence S. 55° 36′ 21″ W. 151.00 feet to the place of beginning.

Together with the tenements, hereditaments, and appurtenances thereunto belonging or appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and

(b) Twenty-five hundred (2500) half barrel beer containers to be selected by representatives of [656] each of the parties hereto from the half barrel beer containers belonging to

Petitioner's Exhibit No. 3—(Continued)

Rainier and located in the territory hereinafter described."

be and the same is hereby, amended to read as follows:

"First: Rainier hereby sells to Century, and Century hereby purchases from Rainier, all of the property hereinbelow described, towit:

(a) All the following described property situate in the City of Seattle, County of King, State of Washington:

A tract of land comprising portions of tracts 8 and 9 of the Julius Horton Tracts recorded in Vol. 3 of Plats, page 171, records of King County, Washington; also an unplatted tract of land situated in the L. M. Collins Donation Claim lying between the easterly line of said tract 8 of the Julius Horton Tracts and the northerly line of former Nora Street in Sprague's Addition to the City of Seattle as recorded in Vol. 7 of Plats, page 49, records of King County, Washington, also portions of vacated Nora Street as vacated by Ordinance No. 78 City of Georgetown, also portion of Block 1, Sprague's Addition and vacated alley in said block, also vacated portion of Juneau St. as vacated by Ordinance No. 35490 City of Seattle, the boundaries of said tract of land are more particularly described as follows:

Commencing at the monument marking the

Petitioner's Exhibit No. 3—(Continued)

intersection of the west line of said Julius Horton Tract and the center line of Duwamish Avenue, and thence south 34° 23′ 39″ east along said center line 247.95 feet; thence north 55° 36′ 21″ east 30 feet to the easterly margin of Duwamish Avenue and the true place of beginning; thence south 34° 23′ 39″ east along said easterly margin 1389.08 feet; thence continuing along the northerly margin of Duwamish Avenue south 66° 47′ 45″ east 38.19 feet; thence south 70° 45′ 24″ east 44.91 feet to the northwesterly margin of the unvacated portion of Juneau Street as the same is set forth in Ordinance No. 35490 of Seattle; thence north 53° 41′ 06″ east 123.86 feet along said Juneau Street margin; thence south 80° 22′ 34″ east 33.58 feet along the northerly margin of Juneau Street; thence north 53° 41′ 06″ east 7.18 feet along said margin of Juneau Street; thence north 36° 18′ 54″ west 1472.41 feet to a point of curve; thence to the right on a curve of 5877.22 feet radius 4.85 feet; thence south 55° 36′ 21″ west 151 feet, more or less, to place of beginning.

Together with the tenements, hereditaments, and appurtenances thereunto belonging or appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and

(b) Twenty-five hundred (2500) half barrel [657] beer containers to be selected by representatives of each of the parties hereto from

Petitioner's Exhibit No. 3—(Continued)

the half barrel beer containers belonging to Rainier and located in the territory hereinafter described."

(2) That, in order to more fully and correctly set forth the intention and understanding of the parties, paragraph Twelfth of said Agreement, which said paragraph now reads as follows:

"Twelfth: Century agrees that upon acquiring title to the real property herein agreed to be sold to it by Rainier, it will, in addition to executing the mortgage provided in paragraph Third hereof, execute and deliver to Rainier such document or documents as Rainier shall deem necessary to cause said real property to stand as security for the prompt and faithful compliance by Century of all of its obligations under this agreement, to the end that should Century default in the performance of its obligations under this agreement, and should Rainier elect to terminate this agreement, then and in that event, title to said real property shall pass to Rainier, free and clear of all liens and encumbrances, as and for liquidated damages due to such default.

Century further agrees that should it sell said property, it will, under written agreements satisfactory to Rainier, impound the proceeds received from such sale to the extent of Two Hundred Fifty Thousand Dollars ($250,000.00), or such sums as shall be realized on said sale, which said impounded funds shall thereafter stand as security for the

Petitioner's Exhibit No. 3—(Continued)

prompt and faithful compliance by Century of all of its obligations under this agreement, and in the event of default, be transferred and delivered to Rainier as and for liquidated damages.

It is understood and agreed by and between the parties hereto that in the event of the default of Century hereunder, the termination of this agreement by Rainier, and the transfer or delivery to Rainier of said real property, or such impounded proceeds as liquidated damages, Rainier shall, in addition thereto, be entitled to recover any and all royalties due and payable under this agreement at the time of the termination thereof, which said amounts Century agrees to pay upon demand."

be, and the same is hereby, amended to read as follows:

"Twelfth: Century agrees that upon acquiring title to the real property herein agreed to be sold to it by Rainier, it will, in addition to executing the mortgage provided in paragraph Third hereof, execute and deliver to Rainier such document or documents as Rainier shall deem necessary to cause said [658] real property to stand as security for the prompt and faithful performance by Century of all of its obligations under this agreement, to the end that should Century default in the performance of its obligations under this agreement, and should Rainier elect to terminate this agreement, then and in that event, title to said real property shall pass to Rainier, free and clear of all liens and encum-

Petitioner's Exhibit No. 3—(Continued)

brances, as and for liquidated damages due to such default.

Century further agrees that should it sell said property, it will impound, under written agreements satisfactory to Rainier, and with a bank acceptable to Rainier, the proceeds received from such sale to the extent of Two Hundred Fifty Thousand Dollars ($250,000.00), or such sums as shall be realized on said sale, which said impounded funds shall thereafter stand as security for the prompt and faithful performance by Century of all of its obligations under this agreement, and in the event of default, be transferred and delivered to Rainier as and for liquidated damages.

Century further agrees that should it for any reason or cause whatsoever (other than by a sale as authorized in the paragraph immediately preceding) lose title to, or the right to possession of, the real property herein agreed to be sold to it by Rainier, it will, within ten (10) days from the date upon which title to, or the right to possession of, said real property is lost, impound with a bank satisfactory to Rainier, an amount in cash, lawful money of the United States, equal and equivalent to the fair value as of the date of loss of said real property and the improvements located thereon, which money shall be impounded under written agreement satisfactory to Rainier, and shall thereafter stand as security for the prompt and faithful performance by Century of all of its obligations under this Agreement, and in the event of default,

Petitioner's Exhibit No. 3—(Continued)

be transferred and delivered to Rainier as and for liquidated damages; provided, however, that nothing in this paragraph contained shall require Century to deposit cash in excess of the sum of Two Hundred Fifty Thousand Dollars ($250,000.00). The fair value of said property on said date shall be determined by an appraisal made by an appraiser approved in writing by Rainier.

It is the purpose, understanding and intention of the parties hereto that at all times and as long as this Agreement remains in force, the said real property, or the proceeds realized upon the sale thereof (to the extent of not to exceed Two Hundred Fifty Thousand Dollars ($250,000.00) or cash, lawful money of the United States equal and equivalent to the fair value of the property and improvements at the time of loss (not to exceed, however, the sum of Two Hundred Fifty Thousand Dollars ($250,-000.00) shall stand as security for the prompt and faithful [659] performance by Century of all of its obligations under this Agreement, and in the event of default, be transferred and delivered to Rainier as and for liquidated damages.

It is understood and agreed by and between the parties hereto that in the event of the default of Century hereunder, the termination of this Agreement by Rainier, and the transfer or delivery to Rainier of said real property, or such impounded proceeds or cash as liquidated damages, Rainier shall, in addition thereto, be entitled to recover any and all royalties due and payable under this Agree-

Petitioner's Exhibit No. 3—(Continued)

ment at the time of the termination thereof, which said amounts Century agrees to pay upon demand.

Rainier agrees that any proceeds required to be impounded by Century pursuant to the provisions of this paragraph may be impounded with the Trustee at the time in office under the Trust Indenture executed by and between the parties hereto and The First National Bank of Seattle for the purpose of causing the real property herein in this agreement described to stand as security for the prompt and faithful performance by Century of all of its obligations under this Agreement, as required by the provisions of this paragraph."

(3) On or about the 3rd day of July, 1935, a survey was made of the real property and improvements thereon herein agreed to be sold, a copy of which survey has been received by each of the parties hereto and discloses that certain of the buildings located upon said real property extend beyond the boundary lines of said real property.

Century agrees to, and does, hereby, accept said real property with the buildings and improvements as now located thereon, and hereby expressly releases Rainier from any obligation to correct or remedy the extension or overlapping of said buildings beyond the boundary lines of said property, and also releases Rainier from any liability, financial or otherwise, with respect to said extension and overlapping of said buildings. Century further releases Rainier of and from any obligation or liability with respect to said extension and overlapping

Petitioner's Exhibit No. 3—(Continued)

of said buildings that may exist or hereafter arise by virtue of the covenants, warranties and conditions of any deed executed by Rainier to Century conveying title to said property. [660]

Rainier releases Century of and from any obligation or liability with respect to said extension and overlapping of said buildings that may exist or hereafter arise by virtue of the covenants, warranties and conditions of any Mortgage executed by Century pursuant to the provisions of paragraph Third of said Agreement and of and from any obligation or liability with respect to said extension and overlapping of said buildings that may exist or hereafter arise by virtue of the covenants, warranties and conditions of any conveyance or other agreement executed pursuant to the provisions of paragraph Twelfth of said Agreement.

(4) Except as herein amended and supplemented, said Agreement dated the 23rd day of April, 1935, shall remain in full force and effect.

(5) This Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective successors and assigns.

In witness whereof, the parties hereto have executed this Agreement by their officers thereunto duly authorized, and have caused their corporate seals to be hereunto affixed, all as of the day and year first hereinabove written.

RAINIER BREWING
COMPANY, INC.,
By /s/ LOUIS HEMRICH,
President,

Petitioner's Exhibit No. 3—(Continued)

By /s/ A. R. SPECHT,
Secretary,
Party of the first part.

SEATTLE BREWING &
MALTING COMPANY
(formerly known as Century
Brewing Association),

By /s/ E. G. SICK,
President,

By /s/ W. H. MACKIE,
Secretary,
Party of the second part.

State of California,
City and County of San Francisco—ss.

On this 22nd day of July, in the year one thousand nine hundred and thirty-five, before me, James F. McCue, a Notary Public in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared Louis Henrich and A. R. Specht, known to me to be the President and Secretary, respectively, of Rainier Brewing Company, Inc., the corporation that executed the within and foregoing instrument, and known to me to be the persons who executed the within and foregoing instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same; and further acknowledged the said instrument to be the free and voluntary act and deed of

Petitioner's Exhibit No. 3—(Continued)

said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, the day and year in this certificate first above written.

/s/ JAMES F. McCUE,
Notary Public in and for the City and County of San Francisco, State of California.

My commission expires February 25, 1938. [662]

State of Washington,
County of King—ss.

On this 18th day of July, in the year one thousand nine hundred and thirty-five, before me, Orville H. Mills, a Notary Public in and for the County of King, State of Washington, residing therein, duly commissioned and sworn, personally appeared E. G. Sick and W. H. Mackie, known to me to be the President and Secretary, respectively, of Seattle Brewing & Malting Company, the corporation that executed the within and foregoing instrument, and known to me to be the persons who executed the within and foregoing instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same; and further acknowledged the said instrument to be the free and voluntary act and deed of said corporation,

Petitioner's Exhibit No. 3—(Continued)

for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the said County of King, State of Washington, the day and year in this certificate first above written.

/s/ ORVILLE H. MILLS,
Notary Public in and for the County of King, State of Washington.

My commission expires July 4, 1937. [663]

PETITIONER'S EXHIBIT No. 4

This Indenture, made the 18th day of July, in the year One Thousand Nine Hundred and Thirty-five, between Rainier Brewing Company, Inc., a corporation duly organized and existing under and by virtue of the laws of the State of California and having its principal office for the transaction of business in the City and County of San Francisco, State of California, the party of the first part, and Seattle Brewing & Malting Company (formerly known as Century Brewing Association), a corporation duly organized and existing under and by virtue of the laws of the State of Washington and having its principal office in the City of Seattle, County of King, State of Washington, the party of the second part,

Witnesseth:

That the party of the first part, in consideration of the sum of Ten Dollars ($10.00), lawful money of the United States of America, to it in hand paid by the said party of the second part, receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey, and warrant unto the said party of the second part, its successors and assigns, forever, that certain lot, piece or parcel of land bounded and described as follows, to-wit:

> All the following described property situate in the City of Seattle, County of King, State of Washington:
>
> A tract of land comprising portions of tracts 8 and 9 of the Julius Horton Tracts recorded in Vol. 3 of Plats, page 171, records of King County, Washington; also an unplatted tract of land situated in the L. M. Collins Donation Claim lying between the easterly line of said tract 8 of the Julius Horton Tracts and the northerly line of former Nora Street in Sprague's Addition to the City of Seattle as recorded in Vol. 7 of Plats, page 49, records of King County, Washington, also portion of vacated Nora Street as vacated by Ordinance No. 78 City of Georgetown, also portion of Block 1, Sprague's Addition and vacated alley in said block, also vacated portion of [665] Juneau St. as vacated by Ordinance No. 35490 City of Seattle, the boundaries of said tract of land are more particularly described as follows:

Commencing at the monument marking the intersection of the west line of said Julius Horton Tracts and the center line of Duwamish Avenue, and thence south 34° 23′ 39″ east along said center line 247.95 feet; thence north 55° 36′ 21″ east 30 feet to the easterly margin of Duwamish Avenue and the true place of beginning; thence south 34° 23′ 39″ east along said easterly margin 1389.08 feet, thence continuing along the northerly margin of Duwamish Avenue south 66° 47′ 45″ east 38.19 feet; thence south 70° 45′ 24″ east 44.91 feet to the northwesterly margin of the unvacated portion of Juneau Street as the same is set forth in Ordinance No. 35490 of Seattle; thence north 53° 41′ 06″ east 123.86 feet along said Juneau Street margin; thence south 80° 22′ 34″ east 33.58 feet along the northerly margin of Juneau Street; thence north 53° 41′ 06″ east 7.18 feet along said margin of Juneau Street; thence north 36° 18′ 54″ west 1472.41 feet to a point of curve; thence to the right on a curve 5877.22 feet radius 4.85 feet; thence south 55° 36′ 21″ west 151 feet, more or less, to place of beginning.

Together with the tenements, hereditaments, and appurtenances thereunto belonging or appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To Have and to Hold the said premises, together with the appurtenances, unto the said party of the second part, and to its successors and assigns forever.

In Witness Whereof, the party of the first part has hereunto signed its name and affixed its corporate seal, by its officers thereunto duly authorized, the day and year first hereinabove written.

[Corporate Seal]

RAINIER BREWING COMPANY, INC.
By LOUIS HEMRICH,
President.
By A. R. SPECHT,
Secretary. [666]

State of California,
City and County of San Francisco—ss.

On this 18th day of July, in the year one thousand nine hundred and thirty-five, before me, James F. McCue, a Notary Public in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared Louis Hemrich and A. R. Specht, known to me to be the President and Secretary, respectively, of Rainier Brewing Company, Inc., the corporation that executed the within and foregoing instrument, and known to me to be the persons who executed the within and foregoing instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same; and further acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were

authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, at my office in the City and County of San Francisco, the day and year in this Certificate first above written.

[Notarial Seal] JAMES F. McCUE,
Notary Public in and for the City and County of San Francisco, State of California. My Commission Expires February 25, 1938. [667]

PETITIONER'S EXHIBIT No. 5

This Indenture, made the 19th day of July, A.D. One Thousand Nine Hundred and Thirty-five, between Seattle Brewing & Malting Company, formerly known as Century Brewing Association, a Washington corporation, party of the first part (hereinafter called the "mortgagor"), and Rainier Brewing Company, Inc., a California corporation, party of the second part (hereinafter called the "mortgagee"),

Witnesseth:

That the mortgagor, for and in consideration of the sum of fifty thousand dollars ($50,000.00) lawful money of the United States of America, receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey and confirm unto the mortgagee, its successors and assigns, the following described tract of land, situate, lying and

being in the City of Seattle, County of King, State of Washington, and particularly bounded and described as follows, to-wit:

A tract of land comprising portions of Tracts 8 and 9 of the Julius Horton Tracts recorded in Vol. 3 of Plats, page 171, records of King County, Washington, also an unplatted tract of land situated in the L. M. Collins Donation Claim lying between the easterly line of said Tract 8 of the Julius Horton Tracts and the northerly line of former Nora Street in Sprague's Addition to the City of Seattle as recorded in Vol. 7 of Plats, page 49, records of King County, Washington, also portions of vacated Nora Street as vacated by Ordinance No. 78 City of Georgetown, also portion of Block 1, Sprague's Addition and vacated alley in said block, also vacated portion of Juneau St. as vacated by Ordinance No. 35490 City of Seattle, the boundaries of said tract of land are more particularly described as follows: [668]

Commencing at the monument marking the intersection of the west line of said Julius Horton Tracts and the center line of Duwamish Avenue, and thence south 34° 23′ 39″ east along said center line 247.95 feet; thence north 55° 36′ 21″ east 30 feet to the easterly margin of Duwamish Avenue and the true place of beginning; thence south 34° 23′ 39″ east along said easterly margin 1389.08 feet; thence continuing along the northerly margin of Duwamish Avenue

south 66° 47′ 45″ east 38.19 feet; thence south 70° 45′ 24″ east 44.91 feet to the northwesterly margin of the unvacated portion of Juneau Street as the same is set forth in Ordinance No. 35490 of Seattle; thence north 53° 41′ 06″ east 123.86 feet along said Juneau Street margin; thence south 80° 22′ 34″ east 33.58 feet along the northerly margin of Juneau Street; thence north 53° 41′ 06″ east 7.18 feet along said margin of Juneau Street; thence north 36° 18′ 54″ west 1472.41 feet to a point of curve; thence to the right on a curve of 5877.22 feet radius 4.85 feet; thence south 55° 36′ 21″ west 151 feet, more or less, to place of beginning.

Together with the tenements, hereditaments, and appurtenances now and hereafter belonging to or used in connection with the above described premises, and all buildings and structures now upon or to be erected upon the said premises or used in connection therewith; and together with the rents, issues and profits of the mortgaged property.

This Conveyance is intended as a mortgage to secure the payment of fifty thousand dollars ($50,000) lawful money of the United States of America, together with interest thereon at the rate of five per cent (5%) per annum from date until paid, according to the terms and conditions of two certain promissory notes each for twenty-five thousand dollars ($25,000.00) and both bearing date May 27th, 1935, made by the mortgagor and payable to the mortgagee or order. [669]

This Mortgage also secures the performance of

the covenants and agreements hereinafter contained, to-wit:

(1) The mortgagor covenants that it is lawfully seized of said premises in fee simple, has good right and lawful authority to convey and mortgage said premises in the manner and form aforesaid, and that said premises are free from encumbrances; and the mortgagor shall and will warrant and defend the same forever against the lawful claims and demands of all persons whomsoever, and this covenant shall not be extinguished by any foreclosure hereof, but shall run with the land.

(2) The mortgagor covenants and agrees to pay all debts and moneys secured hereby when from any cause the same shall become due; not to permit or suffer any tax, assessment or other lien or encumbrance prior to the lien of this mortgage to exist at any time against said premises; during the continuance of this mortgage to pay all taxes and assessments levied or imposed upon the property covered by this mortgage and the debt hereby secured before delinquency, and to secure and deliver to the mortgagee, before any interest or penalty on any tax or assessment shall begin to run or accrue, the official receipt of the proper officer showing payment thereof; not to commit or suffer waste on said premises; to keep all buildings unceasingly insured against loss or damage by fire in manner, form and companies satisfactory to the mortgagee and in a sum not less than $250,000.00 or not less than the full insurable value of such property; to pay all pre-

miums and charges for all such insurance when due, and to deposit with the mortgagee all insurance policies affecting the mortgaged premises; and covenants that all insurance whatsoever affecting [670] the mortgaged premises shall be made payable in case of loss to the mortgagee with a mortgage subrogation clause in favor of and satisfactory to the mortgagee. In case of payment of any policy or any part thereof, the amount so paid shall be applied either upon the indebtedness secured hereby or in rebuilding or restoring the premises, as the mortgagee and mortgagor shall determine at such time.

(3) Should the mortgagor be or become in default in any of the foregoing covenants or agreements, then the mortgagee (whether electing to declare the whole indebtedness hereby secured due and collectible, or not) may perform the same, and all expenditures made by the mortgagee in so doing, or under any of the covenants or agreements hereof, shall draw interest at the rate of ten per cent (10%) per annum, but all such expenditures shall be payable by the mortgagor without demand and together with interest and costs accruing thereon, and shall be secured by this mortgage; and the rights and duties of the parties covenanted for in this paragraph shall apply equally to any and all part payments or advances made by the mortgagee for any of the purposes herein referred to.

(4) Time is material and of the essence hereof, and if default be made in the payment of any of the sums hereby secured or in the performance of any of the covenants herein contained, then in any

such case the balance of unpaid principal with accrued interest or other indebtedness hereby secured shall, at the election of the mortgagee, become immediately due without notice, and this mortgage may be foreclosed; but the failure of the mortgagee to exercise [671] such option in any one or more instances shall not be considered as a waiver or relinquishment of the right to exercise such option in case of any default, but such option shall be and remain continuously in full force and effect.

(5) In any suit to foreclose this mortgage or to collect any charge growing out of the debt hereby secured, or in any suit which the mortgagee may be obligated to defend to effect or protect the lien hereof, the mortgagor agrees to pay a reasonable sum as attorney's fees and all costs and legal expenses in connection with said suit, and further agrees to pay the reasonable cost of searching the records, and said sums shall be secured hereby and included in the Decree of Foreclosure.

(6) The rents, issues and profits of the mortgaged property, to and until the maturity of the indebtedness hereby secured, either by lapse of time or by reason of default of the mortgagor, shall belong to the mortgagor, but upon such maturity of said indebtedness for any cause the mortgagee shall have the right forthwith to enter into and upon the mortgaged premises and take possession thereof and to collect the rents, issues and profits thereof and apply the same, less reasonable costs of collection, upon the indebtedness hereby secured; and the mortgagee shall have the right to the appoint-

ment of a Receiver to collect the rents, issues and profits of the mortgaged premises. Failure on the part of the mortgagee to collect any such rents, issues and profits shall not constitute a waiver of any prior default under the terms and conditions of this mortgage. [672]

(7) Each of the covenants and agreements herein shall be binding upon all successors in interest of the mortgagor, and each shall inure to the benefit of any successors in interest of the mortgagee.

In Witness Whereof, the said mortgagor has caused these presents to be executed by its President and Secretary, thereunto duly authorized, and has caused its corporate seal to be hereunto affixed, the day and year hereinabove first written.

SEATTLE BREWING & MALTING COMPANY.
(Formerly Known as Century Brewing Association)
By EMIL G. SICK,
President.

Attest:

[Corporate Seal] W. H. MACKIE,
Secretary. [678]

State of Washington,
County of King—ss.

This Is to Certify that on this 19th day of July, 1935, before me, the undersigned, a Notary Public in and for the State of Washington, duly commis-

sioned and sworn, personally came Emil G. Sick and W. H. Mackie, to me known to be the President and Secretary, respectively, of Seattle Brewing & Malting Company, formerly known as Century Brewing Association, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal the day and year in this Certificate first above written.

[Notarial Seal] ORVILLE H. MILLER,
Notary Public in and for the State of Washington,
residing at Seattle, Washington. [674]

PETITIONER'S EXHIBIT No. 6

This Agreement, made and entered into this 19th day of July, 1935, by and between Seattle Brewing & Malting Company (formerly known as Century Brewing Association), a corporation duly organized and existing under and by virtue of the laws of the State of Washington and having its principal office in the City of Seattle, County of King, in said state (hereinafter for convenience termed "Grantor"), party of the first part, The First National Bank of Seattle, a national banking association, having its principal office in the City of Se-

Petitioner's Exhibit No. 6—(Continued)

attle, County of King, State of Washington (hereinafter for convenience termed "Trustee"), party of the second part, and Rainier Brewing Company, Inc., a corporation duly organized and existing under and by virtue of the laws of the State of California and having its principal office in the City and County of San Francisco, in said state (hereinafter for convenience termed Beneficiary"), party of the third part,

Witnesseth:

Whereas, the Grantor and the Beneficiary made and entered into an agreement dated the 23rd day of April, 1935 (hereinafter for convenience termed "Agreement"), wherein the Beneficiary sold to the Grantor and the Grantor purchased from the Beneficiary certain real and personal property therein described, including the real property hereinafter described, and whereby the Beneficiary licensed and authorized the Grantor, upon the terms and conditions therein set forth and in consideration of the prompt payment of the royalties therein agreed to be paid, to manufacture and [675] market beer, ale, and other alcoholic malt beverages within the State of Washington and the Territory of Alaska under the trade names and brands of "Rainier" and "Tacoma," and likewise authorized and permitted the Grantor to use within said state and territory any and all copyrights, trademarks, labels or other advertising media adopted or used

Petitioner's Exhibit No. 6—(Continued)

by the Beneficiary in connection with its beer, ale, and other alcoholic malt beverages; and

Whereas, in said Agreement the Grantor agrees that, upon acquiring title to the real property hereinafter described, it will execute and deliver to the Beneficiary such document or documents as the Beneficiary shall deem necessary to cause said real property to stand as security for the prompt and faithful compliance by the Grantor of all of its obligations under said Agreement, to the end that should the Grantor default in the performance of its obligations under said Agreement and should the Beneficiary elect to terminate said Agreement, then and in that event title to said real property shall pass to the Beneficiary, free and clear of all liens and encumbrances, as and for liquidated damages due to such default, subject, however, to the right of the Grantor to sell said property at any time prior to such default, at the fair market value thereof for cash and to impound under written agreement satisfactory to the Beneficiary, the proceeds received from such sale to the extent of two hundred fifty thousand dollars ($250,000.00), or such lesser sum as shall be realized on such sale, which said impounded funds shall thereafter stand, in lieu of said property, as security for the prompt and faithful performance by the Grantor of all of its obligations under said Agreement, and in the event of default under said Agreement, be transferred and delivered to the Beneficiary as and for liquidated damages; and [676]

Petitioner's Exhibit No. 6—(Continued)

Whereas, a copy of said Agreement, dated the 23rd day of April, 1935, duly identified by the signatures of each of the parties thereto, has been deposited with the Trustee concurrently with the execution hereof, to which said Agreement reference is made for a more complete and detailed statement of the terms and provisions thereof; and

Whereas, the Grantor and the Beneficiary agree that in and by said Agreement the Beneficiary has parted with business, properties and assets, the exact value of which cannot readily be determined, and in the event of default by the Grantor in the performance of the terms and conditions of said Agreement, the Beneficiary will suffer damages which cannot be accurately or definitely computed or measured in money, and said parties agree that in the event of any breach of said Agreement, the real property hereinafter described shall be transferred (or, should it be sold by the Grantor in the manner hereinafter provided, then the cash proceeds, to the amount of $250,000.00, or such lesser sum as shall be received, from such sale shall be paid) to the Beneficiary as and for liquidated damages to compensate the Beneficiary for the damages so suffered. And said parties further agree that the Beneficiary would not have made and entered into said Agreement or have transferred and conveyed to the Grantor the personal and real property therein described, including the real property hereinafter described, or have granted the license therein granted, had the Grantor not agreed to pledge the real property hereinafter described, or

Petitioner's Exhibit No. 6—(Continued)

the cash proceeds to the extent of two hundred fifty thousand dollars ($250,000.00), or such lesser sum as shall be received, from the sale thereof, as security for the prompt and faithful performance by the Grantor of all of the terms and provisions contained in said Agreement; and [677]

Whereas, the Grantor and the Beneficiary desire to carry out the intent and purpose of said Agreement with respect to causing the said real property and said cash proceeds to stand as security for the performance by the Grantor of the terms and provisions of said Agreement;

Now, Therefore, for and in consideration of the sum of ten dollars ($10.00), lawful money of the United States of America, in hand paid by the Beneficiary to the Grantor, receipt whereof is hereby acknowledged, and in further consideration of the conveyance by the Beneficiary to the Grantor of the real and personal property described in said Agreement, and the granting by the Beneficiary to the Grantor of the rights and privileges granted in said Agreement, the Grantor does, by these presents, grant, bargain, sell, convey, and warrant unto the Trustee, party of the second part, and its successors and assigns, as Trustee, forever, that certain lot, piece, or parcel of land bounded and described as follows, to-wit:

All the following described property situate in the City of Seattle, County of King, State of Washington:

A tract of land comprising portions of tracts

Petitioner's Exhibit No. 6—(Continued)

8 and 9 of the Julius Horton Tracts recorded in Vol. 3 of Plats, page 171, records of King County, Washington; also an unplatted tract of land situated in the L. M. Collins Donation Claim lying between the easterly line of said tract 8 of the Julius Horton Tracts and the northerly line of former Nora Street in Sprague's Addition to the City of Seattle as recorded in Vol. 7 of Plats, page 49, records of King County, Washington, also portion of vacated Nora Street as vacated by Ordinance No. 78 City of Georgetown, also portion of Block 1, Sprague's Addition and vacated alley in said block, also vacated portion of Juneau St. as vacated by Ordinance No. 35490 City of Seattle, the boundaries of said tract of land are more particularly described as follows:

Commencing at the monument marking the intersection of the west line of said Julius Horton Tracts and the center line of Duwamish Avenue, and thence south 34° 23′ 39″ east along said center line 247.95 feet; thence north 55° 36′ 21″ east 30 feet to the easterly margin of Duwamish Avenue and the true place of beginning; thence south 34° 23′ 39″ east along said easterly margin 1389.08 feet; thence continuing along the northerly margin of Duwamish Avenue south 66° 47′ 45″ east 38.19 feet; thence south 70° 45′ 24″ east 44.91 feet to the northwesterly margin of the unvacated portion of Juneau Street as the same is set forth in Or-

Petitioner's Exhibit No. 6—(Continued)

dinance No. 35490 of Seattle; thence north 53° 41′ 06″ east 123.86 feet along said Juneau Street margin; thence south 80° 22′ 34″ east 33.58 feet along the northerly margin of Juneau Street; thence north 53° 41′ 06″ east 7.18 feet along said margin of Juneau Street; thence north 36° 18′ 54″ west 1472.41 feet to a point of curve; thence to the right on a curve of 5877.22 feet radius 4.85 feet; thence south 55° 36′ 21″ west 151 feet, more or less, to place of beginning.

Together with all and singular the rights, claims, privileges and immunities appurtenant thereto, together with any and all buildings, improvements and appurtenances now standing or at any time hereafter constructed or placed upon said land or any part thereof, and all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; subject, however, to the prior lien of a mortgage heretofore executed by the Grantor securing the payment to the Beneficiary of the sum of fifty thousand dollars ($50,000.00).

To Have and to Hold all and singular the said premises and properties unto the Trustee, its successors in trust, and assigns, forever.

But in Trust, Nevertheless, with power of sale under and subject to the provisions and conditions hereinafter set forth, for the benefit and security of the Beneficiary, and to secure the prompt and

Petitioner's Exhibit No. 6—(Continued)

faithful performance by the Grantor of each and all of the covenants, agreements and conditions of the Agreement made and entered into by and between the Grantor [679] and the Beneficiary, dated the 23rd day of April, 1935, so that the Beneficiary shall be secured in the performance and observance by the Grantor of each and all of the covenants, agreements, and conditions of said Agreement, and in the event of the default of the Grantor in the performance and observance of any of said covenants, agreements and conditions said property shall be transferred and conveyed unto the Beneficiary, free and clear of all liens and encumbrances, as and for liquidated damages due to such defaults.

And it is hereby covenanted and declared that the trust estate is to be held by the Trustee subject to the covenants, conditions, uses and trusts hereinafter set forth, as follows:

Article I.

Section 1. The covenants, agreements and conditions, the performance and observance of each and all of which are secured by this Indenture and the trust hereby created, are fully set forth in the Agreement made and entered into by and between the Grantor and the Beneficiary, dated April 23rd, 1935, a copy of which said Agreement, duly identified by the signatures of said parties, has been deposited with the Trustee concurrently with the execution hereof. Reference is hereby made to said

Petitioner's Exhibit No. 6—(Continued)

copy of said Agreement for a more complete and detailed statement of its provisions.

Article II.

Section 1. The Grantor covenants and agrees that it will duly and promptly perform and observe each and all the covenants, agreements, and conditions contained in said Agreement and in this Indenture, and will promptly and at the [680] times therein specified, pay to the Beneficiary the payments agreed to be made in and by said Agreement.

Section 2. The Grantor covenants that it is well seized of the property herein conveyed, assigned and pledged; that it has good right, full power, and lawful authority to grant, bargain, sell, and assign, and to convey and pledge the same in the manner and form herein done or intended to be done; and that it will forever warrant and defend the right, title and interest herein conveyed, assigned, and pledged, to the Trustee against the claims of any persons whomsoever.

Section 3. The Grantor covenants and agrees that at any time it will make, execute, acknowledge and deliver, or cause or procure to be made, executed, acknowledged and delivered, all such further and other deeds, transfers, assignments or other instruments, and do, or cause to be done, all such acts and things as reasonably shall be required by the Trustee or the Beneficiary to effectuate the intention of these presents and to assure and to confirm to the Trustee, and its successors in the trust

Petitioner's Exhibit No. 6—(Continued)

and their respective assigns, all and singular the property hereinbefore described, and hereby intended or purported to be conveyed or assigned, so as to render the same available as security for the performance by the Beneficiary of the covenants, agreements, and conditions of said Agreement, according to the intent and purpose herein expressed.

Section 4. The Grantor covenants and agrees that it will cause this Indenture to be duly and properly filed for record and recorded in the office of the County Auditor of King County, State of Washington, with all convenient speed; and that it will hereafter cause to be duly and properly filed for record and recorded, any supplement hereto, or any [681] conveyance or transfer hereunder so far as may be necessary to make this Indenture and all such supplements, conveyances, or transfers, a good and valid lien upon the properties covered hereby against all persons whomsoever.

Section 5. The Grantor covenants and agrees that on demand of the Trustee or the Beneficiary, it will re-execute, re-acknowledge, and re-record and/or re-file this Indenture, or execute, acknowledge, deliver and record a new instrument, and do all other things necessary to be done whenever and as often as needful in order to preserve (as long as said Agreement shall remain in force) the validity and efficacy hereof as a conveyance of, and continuing lien upon, all the property conveyed, as-

Petitioner's Exhibit No. 6—(Continued)

signed or transferred, or intended to be conveyed, assigned or transferred hereby.

The Grantor further covenants and agrees that it will, from time to time, upon the demand of the Trustee or the Beneficiary, and as often as such demand be made, re-execute or renew this Indenture as a chattel mortgage or execute a new or confirmatory chattel mortgage. Any such chattel mortgage shall be substantially in the form of this Indenture and shall contain substantially the same terms, covenants and provisions as this Indenture, or, at the option of the Trustee or the Beneficiary, may be in the customary form of chattel mortgages in use in the County of King, State of Washington, or in such other form as the Trustee or the Beneficiary may deem sufficient for the accomplishment of the purposes hereof.

Section 6. The Grantor covenants and agrees that this Indenture now is, and (subject to the provisions of this Indenture in respect to the release of property from the lien hereof) always will be kept, a first lien upon the property herein described, subject, however, to the prior lien of a mortgage heretofore executed by the Grantor securing the payment [682] to the Beneficiary of the sum of fifty thousand dollars ($50,000.00), and subject further only to taxes, a lien but not delinquent, and to any assessments, covenants and restrictions of record; and that it will not voluntarily create or suffer to be hereafter created, any lien or charge having equality with, priority to, or preference

Petitioner's Exhibit No. 6—(Continued)

over, the lien or charge of this Indenture upon the trust estate, or any part thereof, or upon the income thereof; that forthwith, after the same shall accrue, it will pay, or cause to be discharged and paid, every lawful claim or demand which, if unpaid, might by law be given precedence over the lien or charge of this Indenture upon said property, or any part thereof, or upon the income thereof.

Section 7. The Grantor covenants and agrees that, from time to time, it will pay and discharge, or cause to be paid and discharged, at least five (5) days before delinquency, all taxes, assessments, rates, and governmental charges lawfully imposed upon the trust estate or any part thereof, or upon the income or profits thereof, and also all taxes, assessments, rates and governmental charges lawfully imposed upon the lien or interest of the Trustee in respect to such trust estate or income. The Grantor covenants and agrees that, from time to time, it will keep the Trustee advised as to the payment of such taxes, assessments, rates and governmental charges, and will present such evidence of the payment thereof as the Trustee may require.

Section 8. The Grantor covenants and agrees that, at all times during the existence of this Indenture and until the discharge thereof, it will insure and keep insured, or cause to be insured and kept insured, in some standard and solvent fire insurance company or companies authorized to transact business in the State of Washington, any and all buildings or other structures located upon said property

Petitioner's Exhibit No. 6—(Continued)

against loss or damage by fire, in an amount equal to their fair insurable value as determined [683] by such company or companies or, in the event the fair insurable value cannot be obtained, then in the largest amount in which such insurance is obtainable; that all policies of insurance on such property may contain the standard 100% co-insurance clause and shall be payable to the Trustee, and shall be delivered to it; and that the Grantor shall promptly pay, or cause to be paid, the premium for such insurance as they may become due. In case of any loss under any such policy or policies of insurance, the Trustee, with the consent of the Beneficiary, may adjust, collect and receipt for and compromise all claims under said policy or policies, and any moneys due thereunder shall be paid to the Trustee.

In case any money shall be paid to the Trustee on account of any loss or damage covered by such insurance, the Grantor shall be entitled to use and apply the same for the purpose of repairing, replacing, rebuilding or restoring any part of the property destroyed or damaged, or for the improvement or betterment of such property. The Trustee shall pay over such insurance moneys upon the written request of the Grantor accompanied by a certificate of an Architect, Engineer, or builder, satisfactory to the Beneficiary, showing the expenditures for which such payment is required, which request and certificate shall constitute the full warrant, direction or justification to the Trustee for the payment of such money. The Trustee or the

Petitioner's Exhibit No. 6—(Continued)

Beneficiary, however, shall have the right to require the Grantor to furnish such further evidence as the Trustee or the Beneficiary may deem necessary to establish the right of the Grantor to the payment of such money and to assure the use of such money by the Grantor in accordance with the terms hereof. Until so used by the Grantor as hereinabove provided, all moneys so received by the Trustee shall be retained by the Trustee as part of the trust estate. In case of the failure of the Grantor to pay the premiums on any policy, the Trustee may, in its [684] discretion but without any obligation to do so, pay such premiums, and all moneys so paid by the Trustee, with interest thereon at the rate of six per cent (6%) per annum until paid, shall be repaid to the Trustee by the Grantor upon demand.

Article III.

Release of Trust Estate

Section 1. Upon the request of the Grantor while no event of default exists, as hereinafter defined (or during the existence of an event of default with the written consent of the Beneficiary), such request being evidenced by resolution of its Board of Directors, copy of which, certified under the corporate seal of the Grantor, shall be lodged with the Trustee, the Trustee, but subject to the conditions and limitations in this Article III prescribed, and not otherwise, shall release from the lien and operation of this Indenture, the entire trust estate. The

Petitioner's Exhibit No. 6—(Continued)

resolution requesting such release shall certify that the Grantor has, for a fair and adequate consideration, sold or contracted to sell the trust estate, and such release shall be subject to the following conditions:

(a) The trust estate shall not be released unless and until

(1) the Beneficiary shall have notified the Trustee in writing that the price to be obtained upon the sale of the trust estate is satisfactory to the Beneficiary, and shall have authorized the Trustee to release the trust estate, or

(2) the fair market value of the trust estate shall have been determined by a board of three appraisers composed of realtors doing business and familiar with real estate values in the City of Seattle, one of such appraisers to be selected by the Beneficiary, one to be selected by the Grantor, and the remaining appraiser to be selected by the two so selected. The concurrence of a majority of the members of said board shall be necessary to express the determination of the board with respect to the fair market value of the trust estate, and the findings of the board with respect to the fair market value of the trust estate shall be binding upon the parties hereto; [685]

(b) Concurrently with, and in consideration of, the release of the trust estate, the Grantor shall pay to the Trustee in cash, lawful money of the United States, an amount equal and

Petitioner's Exhibit No. 6—(Continued)

equivalent to the consideration to be received upon the sale of the trust estate, which amount shall in no event be less than the fair market value of the trust estate, as determined in the manner provided in subdivision (a) of this Section 1: provided, however, that nothing herein contained shall require the payment by the Grantor to the Trustee of a sum in excess of Two Hundred Fifty Thousand Dollars ($250,000); and

(c) Concurrently with the release of the trust estate and the payment to the Trustee of the cash required to be paid pursuant to subparagraph (b) hereof, there shall be deposited with the Trustee an agreement in form and contents satisfactory to the Beneficiary, duly executed by the Grantor, the Trustee and the Beneficiary, supplementing this Indenture and providing the terms under which said cash shall be held as security, in lieu of said trust estate, to accomplish the intents and purposes of this Indenture.

Section 2. The Grantor may at any time, with the written consent of the Beneficiary, make any change in the location of any of the buildings or other structures or equipment upon any part of the trust estate, provided that the efficiency and value of said buildings and property shall not be diminshed thereby.

Petitioner's Exhibit No. 6—(Continued)

Article IV.

Possession

Section 1. Unless and until an event of default under said Agreement dated April 23, 1935, shall have happened, the Grantor shall retain possession of the trust estate and shall manage, operate and use the same and every part thereof, with the rights and privileges pertaining thereto, and shall receive, take, use and enjoy the rents, income, earnings and profits thereof.

Article V.

Defeasance

Section 1. If the Grantor shall well and truly perform and observe each and all of the covenants, agreements and conditions of said Agreement, dated April 23, 1935, and shall well and truly keep, perform and observe all covenants and conditions herein required to be kept, performed and observed by it, both according to the true intent and meaning of said Agreement and of this Indenture, and if the Beneficiary shall notify the Trustee in writing of such performance and observance by the Grantor, or if the Grantor shall avail itself of the option expressed in paragraph Thirteenth of said Agreement dated April 23, 1935, and shall cause the payment to the [686] Beneficiary in cash of the sum therein provided to be paid in the event of the exercise of such option, then and in that case, the estate, right, title and interest of the Trustee hereunder

Petitioner's Exhibit No. 6—(Continued)

shall cease and determine and the property, premises, rights and interests hereby conveyed shall revert to the Grantor or to whomsoever may be entitled thereto; and the Trustee, in such case, on demand of the Grantor, and upon written proof from the Beneficiary of such observance and performance, and at the Grantor's cost and expense, shall execute, acknowledge and deliver to the Grantor proper instruments reconveying, transferring and releasing to the Grantor, or to whomsoever may be entitled thereto, but without any covenant of warranty, however, all property, rights and interests then held by the Trustee hereunder.

Article VI.

Default and Remedies

Section 1. An event of default is hereby defined to be the happening of any default or failure on the part of the Grantor in the due observance or performance of any covenant, agreement or condition contained in said Agreement made and entered into between the Grantor and the Beneficiary, dated April 23, 1935.

Section 2. The happening of an event of default shall, for the purpose of this Indenture, be established by written notice addressed to the Trustee by the Beneficiary, which said notice shall state the particular or particulars in which the Grantor is in default in the performance of the covenants, agreements or conditions contained in said Agree-

Petitioner's Exhibit No. 6—(Continued)

ment, dated April 23, 1935, and the Trustee is authorized and directed to conclusively rely upon such certificate and shall not be required to make any inquiry or investigation with respect to the facts therein stated.

Section 3. If an event of default shall happen, then the Trustee shall, upon receipt of such notice, and upon the written request of the Beneficiary, transfer and convey, or cause to be transferred and conveyed, unto the Beneficiary, or its nominee, all of the property, both real and personal, [687] then constituting the trust estate, which said property shall be so transferred free and clear of all liens and encumbrances and as and for liquidated damages due to such default. The Grantor hereby expressly waives any right to the redemption of all or any part of said trust estate and agrees that upon the request of the Beneficiary or the Trustee it will execute, acknowledge and deliver any and all instruments reasonably required to effectuate such transfer of the trust estate.

Any such transfer or conveyance by the Trustee to the Beneficiary, or any person designated by it, shall divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Grantor of, in, and to the property and premises constituting the trust estate, and shall be a perpetual bar, both at law and in equity, against the Grantor, its successors and assigns, and against any and all persons claiming or to claim the trust

Petitioner's Exhibit No. 6—(Continued)

estate or any part thereof from, through, or under the Grantor, its successors and assigns.

Article VII.

Concerning the Trustee

The Trustee accepts the trust created in this Indenture, but only upon the terms and conditions hereof, including the following, all of which shall bind the Grantor and the Beneficiary:

Section 1. All recitals, statements and representations of fact herein contained are made solely by and on behalf of the Grantor, and the Trustee assumes no responsibility as to the correctness of any such recitals, statements, or representations, or as to the validity of this Indenture, or for the breach by the Grantor of any of the covenants or agreements hereof or of said Agreement dated April 23, 1935, or for or in [688] respect of the title of the trust estate, or for any other act or thing done or omitted hereunder, except through its own wilfull misconduct or gross negligence.

Section 2. The Trustee shall not be required to see to the recording of this Indenture or of any supplement hereto, or of any further conveyance or transfer hereunder, or to do any other act which may be suitable or proper to be done for the continuing of the lien of this Indenture, or for giving notice of the existence of such lien, or to effect insurance against fire or other damage to the trust estate, or to effect public liability or compensation

Petitioner's Exhibit No. 6—(Continued)

insurance, or to pay or require the payment of taxes, assessments or other charges, or to keep informed or advised as to the taking out of insurance or as to the payment of taxes or assessments of or upon the trust estate or any part thereof.

Section 3. The Trustee shall be entitled to be reimbursed for all proper outlay of every sort and nature made by it and incurred in the acceptance and discharge of its trusts hereunder, and to receive reasonable and proper compensation for all services rendered and duties performed at any time in the discharge of said trusts, and for any damage sustained or incurred by it, or by any of its officers, attorneys, agents, or servants, selected and retained with reasonable care in the performance of the trusts hereunder; and all such outlays, fees and commissions, compensation and disbursements, shall constitute and continue a lien on the trust estate; and the Grantor hereby covenants and agrees to pay the same upon demand.

Section 4. The Trustee or any successor or successors may resign and be discharged from the trust created by this Indenture by an instrument duly executed and acknowledged so as to entitle the same to be recorded, and delivered to the Grantor [689] and the Beneficiary, and upon the acceptance of such resignation by the Grantor and the Beneficiary, or after thirty (30) days from the time such resignation is so delivered, the same shall be complete and effectual, and the Trustee resigning thereafter shall be released from all responsibility and

Petitioner's Exhibit No. 6—(Continued)

liability of every kind and nature created or imposed by virtue of this Indenture, arising after the date of such resignation and delivery, except the duty to deliver to the successor trustee any and all property then constituting the trust estate. Any such resignation shall forthwith be recorded by the Grantor in the office of the County Auditor of King County, Washington.

Section 5. The Trustee, or any successor or successors, may be removed at any time by an instrument in writing executed and acknowledged by the Beneficiary, which instrument shall be delivered to the Grantor and forthwith recorded by it, or at its expense, in the office of the County Auditor of King County, Washington, and the Grantor forthwith shall file a copy of such instrument, certified by said County Auditor, with the Trustee. Neither the removal nor the resignation of any Trustee shall affect its right to receive any compensation then due or owing hereunder, or reimbursement for any advances theretofore made hereunder, with interest as herein provided.

Section 6. In case the Trustee, or any trustee hereafter appointed, at any time shall resign or be removed or otherwise become incapable of acting, a successor or successors may be appointed by an instrument in writing executed and acknowledged by the Beneficiary and delivered to the Grantor, which instrument shall show thereon, in writing, the acceptance of the trust by such successor trustee. The Grantor forthwith shall record any such in-

Petitioner's Exhibit No. 6—(Continued)

strument of appointment in the office of the [690] County Auditor of King County, Washington, and shall file with such successor trustee a copy of such instrument certified by said County Auditor. Any successor trustee so appointed shall be a bank or trust company authorized to transact business in the State of Washington and actually transacting business within the City of Seattle in said State.

Section 7. Any successor trustee appointed hereunder shall execute, acknowledge and deliver to the Grantor an instrument accepting such appointment hereunder, and thereupon such successor trustee, without further act, deed or conveyance, shall be vested with the trust estate and with all the assets, properties, rights, powers and trusts of its predecessor in the trust hereunder, with like effect as if originally named as such trustee herein; but the trustee retiring, nevertheless, on the written demand of the successor trustee, shall execute and deliver an instrument conveying and transferring to such successor trustee, upon the trusts herein expressed, all the trust estate and all the estate, property, rights, powers and trusts of the trustee so retiring, and shall duly assign and deliver to the successor trustee so appointed in its place, all properties and moneys constituting the trust estate then held by it. Should any deed, conveyance or instrument in writing from the Grantor be required by any successor trustee for more fully and certainly vesting in and confirming to it the trust estate and said estate, property, rights, powers and trusts, then

Petitioner's Exhibit No. 6—(Continued)

any and all such deeds, conveyances and instruments in writing, on request of the successor trustee, shall be made, executed, acknowledged and delivered by the Grantor. All such instruments executed under the provisions of this Section forthwith shall be recorded by the Grantor, or at its expense, in the office of the County Auditor of King County, Washington.

Section 8. The Trustee, in the execution of the trusts hereunder, may at any time, instead of acting personally, [691] employ and appoint, and in the name of the Grantor incur expenses in the employment of, attorneys, agents, receivers or employees, and shall be entitled to advice of legal counsel concerning all matters of trust hereof and all duties hereunder, and may in all cases pay such reasonable compensation as such Trustee shall deem proper to all such attorneys, agents, receivers or employees as may be reasonably employed in connection with the trusts hereof; and the Grantor covenants and agrees to repay, upon demand, all such outlays and expenditures so incurred. The opinion of such legal counsel shall be full protection and justification to the Trustee for anything done by it, or permitted to be done, in good faith and in accordance with such opinion.

Section 9. The Trustee shall be protected in acting upon any resolution, declaration, request, demand, order, notice, telegram, cablegram, radiogram, waiver, appointment, consent, certificate, affidavit or statement, or upon any other paper or

Petitioner's Exhibit No. 6—(Continued)

document believed by it to be genuine, and to have been passed, adopted, made, signed, executed, acknowledged, verified or delivered by the proper party.

Section 10. The Trustee shall not be chargeable with knowledge or notice of any default unless notified thereof in writing by the Beneficiary. Upon receipt of any such notice of default, the Trustee may conclusively rely upon the facts therein stated.

Article VIII.

General and Miscellaneous Provisions

Section 1. All the covenants, stipulations, promises and agreements in this Indenture contained by or in behalf of the Grantor shall bind and inure to the benefit of its successors and assigns, whether so expressed or not.

Section 2. Nothing in this Indenture, expressed or [692] implied, is intended or shall be construed to confer upon or give to any person, association or corporation, other than the parties hereto, their successors or assigns, any legal or equitable right, remedy or claim under or by reason of this Indenture, or of any covenant, condition or stipulation hereof; and all the covenants, stipulations, promises and agreements in this Indenture contained are, and shall be held to be, for the sole and exclusive benefit of the parties hereto, their successors and assigns.

Petitioner's Exhibit No. 6—(Continued)

Article IX.

Provisions Contrary to Law

If any one or more of the covenants or agreements provided in this Indenture on the part of the Grantor or the Trustee to be performed shall be contrary to any express provision of law, or contrary to the policy of express law, although not expressly prohibited, or otherwise contrary to good morals or against public policy, then such covenant or covenants, agreement or agreements, shall be null and void, and shall be deemed separable from the remaining covenants and agreements, and shall in no way affect the validity of this Indenture or the objects and purposes intended to be accomplished hereby.

In Witness Whereof, the parties heretofore have caused this Indenture to be executed by their respective officers, thereunto duly authorized, and their respective corporate seals hereunto to be affixed, all as of the day and year first hereinabove written.

SEATTLE BREWING &
MALTING COMPANY
(formerly known as Century
Brewing Association),

By /s/ E. G. SICK,
President,

Petitioner's Exhibit No. 6—(Continued)

By /s/ W. H. MACKIE,
Secretary,
Party of the First Part.

THE FIRST NATIONAL
BANK OF SEATTLE,

By C. L. LeSOURD,
Vice Pres.,

By /s/ CAMPBELL KELLEHER,
Party of the Second Part.

RAINIER BREWING
COMPANY, INC.,

By /s/ LOUIS HEMRICH,
President,

By /s/ A. R. SPECHT,
Secretary,
Party of the Third Part.

State of Washington,
County of King—ss.

On this 19th day of July, in the year one thousand nine hundred and thirty-five, before me, Orville H. Mills, a Notary Public in and for the County of King, State of Washington, residing therein, duly commissioned and sworn, personally appeared E. G. Sick and W. H. Mackie, known to me to be the President and Secretary, respectively, of Seattle

Petitioner's Exhibit No. 6—(Continued)

Brewing & Malting Company, the corporation that executed the within and foregoing instrument, and known to me to be the persons who executed the within and foregoing instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same; and further acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, at my office in the said County of King, State of Washington, the day and year in this Certificate first above written.

/s/ ORVILLE H. MILLS,
Notary Public in and for the County of King, State of Washington.

My Commission Expires July 4, 1937. [695]

State of Washington,
County of King—ss.

On this 19th day of July, in the year one thousand nine hundred and thirty-five, before me, Orville H. Mills, a Notary Public in and for the County of King, State of Washington, residing therein, duly commissioned and sworn, personally appeared C. L. Le Sourd and Campbell Kelleher, known to me to

Petitioner's Exhibit No. 6—(Continued)

be the Vice Pres. and ....., respectively, of The First National Bank of Seattle, the corporation that executed the within and foregoing instrument, and known to me to be the persons who executed the within and foregoing instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same; and further acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, at my office in the said County of King, State of Washington, the day and year in this Certificate first above written.

/s/ ORVILLE H. MILLS,
Notary Public in and for the County of King, State of Washington.

My Commission Expires July 4, 1937. [696]

State of California,
City and County of San Francisco—ss.

On this 22nd day of July, in the year one thousand nine hundred and thirty-five, before me, James F. McCue, a Notary Public in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, per-

Petitioner's Exhibit No. 6—(Continued)

sonally appeared Louis Hemrich and A. R. Specht, known to me to be the President and Secretary, respectively, of Rainier Brewing Company, Inc., the corporation that executed the within and foregoing instrument, and known to me to be the persons who executed the within and foregoing instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same; and further acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, at my office in the City and County of San Francisco, the day and year in this Certificate first above written.

/s/ JAMES F. McCUE,

Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires February 25, 1938. [698]

PETITIONER'S EXHIBIT 7

This Agreement, made and entered into this 27th day of March, 1935, by and between Rainier Brewing Company, Inc., a California corporation (hereinafter for convenience termed "Rainier"), party of the first part, and Seattle Brewing & Malting Company (formerly known as Century Brewing Association), a Washington corporation (hereinafter for convenience termed "Century"), party of the second part,

Witnesseth:

Whereas, the parties hereto made and entered into an agreement dated the 23rd day of April, 1935, wherein Rainier, in consideration of the payment of the amounts therein specified and the performance by Century of the covenants, agreements and conditions therein contained, agreed to sell to Century the real and personal property therein described, and grant to Century the rights and licenses therein set forth, which said agreement when separately referred to is hereinafter for convenience termed the "Original Agreement"; and

Whereas, subsequently and as of the 1st day of July, 1935, a memorandum of agreement was made and entered into by and between the parties hereto, modifying to the extent therein set forth, the terms and provisions of the Original Agreement, which said memorandum of agreement, when separately referred to is hereinafter for convenience termed the "Memorandum of Agreement"; and

Whereas, subsequently and on the 18th day of

July, 1935, a further agreement was made and entered into by and between the parties hereto, amending and modifying to the extent therein set forth the terms and provisions of the Original Agreement, which said agreement, dated July 18th, 1935, when separately referred to, [699] is hereinafter for convenience termed the "Amending Agreement;" and

Whereas, said Original Agreement, said Memorandum of Agreement, and said Amending Agreement together constitute one Agreement, and are hereinafter collectively referred to as the "Agreement"; and

Whereas, said Original Agreement provides that Rainier shall sell and Century shall buy at Rainier's cost the bottled inventory and the containers thereof on hand on July 1, 1935, in the territory therein described, which said inventory Rainier agreed to maintain at a reasonable minimum and Rainier has tendered a bill to Century for said bottled inventory and containers asserting a claim in the amount of Fifty-six Thousand Three Hundred Eleven and 84/100 ($56,311.84) Dollars; and

Whereas, Century has paid the sum of Thirty Thousand ($30,000) Dollars on account of the bottled inventory and containers taken over by it on said date and in addition thereto Rainier has credited upon said account the further sum of Eight Hundred Ninety-Seven and 80/100 ($897.80) Dollars so that Rainier's claimed balance due because of such purchase is now the sum of Twenty-

five Thousand Four Hundred Fourteen and 4/100 ($25,414.04) Dollars; and

Whereas, Century has disputed and objected to certain of the items taken into consideration by Rainier in the determination of its cost of said bottled inventory and containers and has asserted that Rainier failed to keep the said inventory at a reasonable minimum; and

Whereas, after full consideration of the matter it is the mutual desire of the parties to adjust and compromise the situation in the manner hereinafter provided; and

Whereas, said Original Agreement further provides that Rainier shall sell and Century shall buy, at the cost thereof to [700] Rainier, any and all dealers' helps and other sales material on hand on July 1st, 1935, within said territory, and Rainier has billed Century for certain Neon signs owned by it and in the hands of customers in said territory on said date at its cost, namely, $3,582.09, and Century contends that it should not be required to pay for said signs due to the fact that said signs were outstanding in the hands of the trade on said date and therefore not available for use by Century, and after fully considering the matter, the parties desire to adjust and compromise the same in the manner hereinafter provided; and

Whereas, the parties hereto desire to further amend and modify certain of the terms and provisions of the Agreement to the extent and in the manner herein set forth;

Now, Therefore, for and in consideration of the

mutual promises and covenants herein contained and of other good and valuable considerations, the receipt whereof is hereby acknowledged, the parties hereto agree as follows:

First: That the disputed balance due for said bottled inventory and containers including cartons, shall be and the same is hereby adjusted to and fixed at the agreed sum of Twenty-one Thousand Five Hundred Twenty-two ($21,522) Dollars, which amount Century agrees to pay in the manner hereinafter provided.

Second: That the disputed balance claimed to be due by Rainier for neon signs shall be and the same hereby is adjusted to and fixed at the agreed sum of One Thousand Seven Hundred Ninety-one and 5/100 ($1791.05) Dollars, which amount Century agrees to pay in the manner hereinafter provided.

Third: In settlement of the foregoing total sum of Twenty-three Thousand Three Hundred Thirteen and 5/100 ($23,313.05) [701] Dollars, so agreed to be due and owing, Rainier agrees that it has received and hereby accepts from Century and credits upon said account, seventeen thousand nine hundred thirty-four (17,934) cartons each containing twenty-four 11 oz. bottles, and ten thousand eight hundred eight (10,808) cartons, each containing twelve 22 oz. bottles, credit therefor being given at the rate of sixty-four and one-sixth cents ($.6416-2/3) per carton of twenty-four 11 oz. bottles each, and fifty-five and forty-one and two-thirds hundredths ($.5541-2/3) cents per carton of twelve

22 oz. bottles each, the said credit amounting to the sum of Seventeen Thousand Four Hundred Ninety-seven and 8/100 ($17,497.08) Dollars. The balance constituting the difference between the sum acknowledged to be due by Century to Rainier, that is, between the sum of Twenty-three Thousand Three Hundred Thirteen and 5/100 ($23,313.05) Dollars and the sum of Seventeen Thousand Four Hundred Ninety-seven and 8/100 ($17,497.08) Dollars, satisfied by the delivery of bottles as hereinabove provided, to-wit: the sum of Five Thousand Eight Hundred Fifteen and 97/100 ($5815.97) Dollars has been paid simultaneously with the execution hereof and the receipt thereof is by Rainier acknowledged.

Fourth: Notwithstanding the provisions of Paragraph Ninth of said agreement it is understood and agreed by and between the parties hereto that Rainier is hereby given the special right to sell its special brand known to the trade and labelled and designated as "Rainier Special Export" beer to the Alaska Commercial Company f.o.b. San Francisco for delivery in the territory of Alaska at a price not less than that for which Century would sell such brand f.o.b. Seattle, which right shall continue until ten (10) days after receipt by Rainier of written notice from Century requesting that it discontinue such sales.

At the time of any such sales so made Rainier shall forward to Century duplicate invoices of such sales and shall [702] within thirty (30) days thereafter account to Century for the actual net profit

resulting therefrom. It is understood that Rainier has made such sales between the effective date of said agreement, viz: July 1, 1935, and the date hereof and as to such sales, if any violation of agreement exists because thereof, the same is hereby by Century waived, it being agreed that Rainier will account to Century for the net profit resulting therefrom, which net profit is agreed to be twenty-seven cents ($.27) per carton for both twenty-four 11 oz. bottles and twelve 22 oz. bottles.

The parties hereto do further agree that Rainier shall account to Century for its net profit as to any and all sales made by Rainier under the terms of this paragraph from and after the date hereof until the termination of the special right and privilege herein granted.

Fifth: It is hereby agreed that Paragraph Sixteenth of the Original Agreement shall be and it is hereby amended to read as follows:

> "Sixteenth: Century agrees that it will, from time to time and when and as requested by Rainier, sell to Rainier, for distribution by Rainier outside of the territory herein described, products manufactured under said trade names and brands "Rainier" and "Tacoma", which said products shall be sold by Century to Rainier at a price to be agreed upon by the parties prior thereto; and Rainier agrees that it will, from time to time and when and as requested by Century, sell to Century, for distribution by Century within the territory here-

in described, products manufactured by it in its San Francisco plant under said trade names and brands of "Rainier" and "Tacoma", which said products shall be sold by Rainier to Century at a price to be agreed upon by the parties prior thereto. Provided, however, that neither party shall have the right to request delivery of, or purchase, products hereunder in an amount in excess of the surplus products then available for sale by the other party."

Sixth: Save and except as herein amended, said Agreement as set forth in said Original Agreement, said Memorandum of Agreement, and said Amending Agreement, shall remain in full force and effect, and said Agreement, as set forth in said three Agreements, [703] and in this Agreement, shall be and constitute one Agreement and shall be binding upon, and inure to the benefit of, the parties hereto, their successors and assigns. Provided, however, that no rights of Century hereunder or under said Agreement shall be assigned by it without the written consent of Rainier first had and obtained.

In Witness Whereof, the parties hereto have executed this Agreement by their officers thereunto duly authorized, and have caused their corporate seals to be hereunto affixed, all as of the day and year first above written.

RAINIER BREWING COMPANY, INC.,

By /s/ A. R. SPECHT,

Vice President.

By /s/ I. E. EPSTEIN,
Assistant Secretary.
Party of the First Part.

SEATTLE BREWING & MALTING COMPANY,
(Formerly Century Brewing Association),

By /s/ E. G. SICK,
President.

By /s/ W. H. MACKIE,
Secretary,
Party of the Second Part.

State of California,
City and County of San Francisco—ss.

On this 30th day of December, 1935, before me, James F. McCue, a Notary Public in and for said City and County and State, residing therein, duly commissioned and sworn, personally appeared A. R. Specht, known to me to be the Vice President, and I. E. Epstein, known to me to be the Assistant Secretary, respectively, of Rainier Brewing Company, Inc., one of the corporations that executed the within and foregoing instrument and known to me to be the persons who executed the within and foregoing instrument on behalf of the said corporation, and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand

and affixed my official seal the day and year in this certificate first above written.

/s/ JAMES F. McCUE,
Notary Public in and for the City and County of San Francisco, State of California.

My commission expires February 25th, 1938. [705]

State of Washington,
County of King—ss.

On this 27th day of November, 1935, before me, the undersigned, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared E. G. Sick, known to me to be the president, and W. H. Mackie, known to me to be the Secretary, respectively, of Seattle Brewing & Malting Company, one of the corporations that executed the within and foregoing instrument, and known to me to be the persons who executed the within and foregoing instrument on behalf of the said corporation, and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

/s/ ORVILLE H. MILLS,
Notary Public in and for the State of Washington, residing at Seattle.

My commission expires July 4, 1937. [706]

PETITIONER'S EXHIBIT 8

Seattle Brewing & Malting Company

July 1, 1940

Rainier Brewing Company, Inc.
1550 Bryant Street
San Francisco, California

Gentlemen:

Pursuant to that right and option granted us in the agreement of April 23, 1935, between Rainier Brewing Company, Inc., a California corporation, and Century Brewing Association, a Washington corporation, to which last named company this company is the successor by change of name, we would advise you of our election to exercise the right and option granted.

We have executed as payable to you, your successors and assigns, and in compliance with your letter of October 22, 1937, are delivering to you through The Anglo California National Bank of San Francisco, and Frank H. Lougher as trustees under the indenture executed by your company, as of September 15, 1937, the promissory notes to be delivered to you simultaneously with our notice of election.

These notes aggregate in principal amount the sum of $1,000,000.00, dated as of July 1, 1940, the date of exercise of our option, and bear interest from date at the rate of 5% per annum. These notes you will find are divided into five equal maturities and are payable respectively on or before one, two, three, four and five years after date.

Since, in your letter of October 22, 1937, you advised us that all payments under the contract should be paid to The Anglo California National Bank of San Francisco, as the corporate trustee under your indenture until such time as we should be furnished with supplemental instructions, and since no supplemental instructions have been given we are delivering the notes to said corporate trustee, assuming that you will work out such assignment with the corporate trustee as may be proper in the premises.

We enclose a copy of our letter of transmittal of the notes to the corporate trustee.

Yours very truly,

SEATTLE BREWING & MALTING COMPANY,
By E. SICK,
President.

EGS:d [707]

July 1, 1940

The Anglo California National Bank
of San Francisco
San Francisco, California

Gentlemen:

Pursuant to that certain right and option granted us in that certain agreement dated April 23, 1935, between Rainier Brewing Company, Inc., a California corporation, and Century Brewing Association, a Washington corporation, to which last named company this company is the successor by change

of name, we would advise you that as of July 1, 1940, we have elected to exercise the right and option granted.

We have executed and are delivering to you and through you to the Rainier Brewing Company, Inc., simultaneously with a notice of election given to the Rainier Brewing Company, Inc., accompanied by a copy of this letter, five promissory notes of Seattle Brewing & Malting Company aggregating in principal amount the sum of $1,000,000, dated as of July 1, 1940, and bearing interest from date at the rate of 5% per annum.

These notes you will find are divided into five equal maturities and are payable respectively on or before one, two, three, four and five years after date.

Delivery of these notes is made to and through you, pursuant to letters of October 22, 1937, from Rainier Brewing Company, Inc., to Seattle Brewing & Malting Company, and of October 23, 1937, from The Anglo California National Bank of San Francisco, to Seattle Brewing & Malting Company, both of which letters refer to an indenture executed September 15, 1937, by Rainier Brewing Company, Inc., to The Anglo California National Bank of San Francisco and Frank H. Lougher, as trustees, under the terms of which letters we were advised that all payments due the Rainier Brewing Company, Inc., under our contract of April 23, 1935, and all rights of Rainier Brewing Company, Inc., under the contract were assigned to said trustees.

As these notes, aggregating $1,000,000, are, since

we have received no notice to the contrary, being delivered to your bank as the corporate trustee under the indenture of September 15, 1937, we simultaneously herewith are notifying [708] the Rainier Brewing Company, Inc., of the delivery of these notes to you and to them in this manner, which notes are enclosed herewith.

We assume that with Rainier Brewing Company, Inc., you will work out such assignment to the trustees as may be proper in the premises.

Very truly yours,

SEATTLE BREWING & MALTING COMPANY,

By .....
President.

EGS:d
Encs: Five (5) notes [709]

Seattle, Washington
July 1, 1940

No. 1
$200,000.00

On or before one (1) year after date and pursuant to the option hereby exercised under that certain agreement dated April 23, 1935, between Rainier Brewing Company, Inc., and Century Brewing Association, a corporation, to which last named corporation the maker hereof is the successor by change of name, the undersigned maker, Seattle Brewing & Malting Company, a Washington corporation, hereby promises to pay to Rainier Brewing Company, Inc., a California corporation, its

successors and assigns, the sum of Two Hundred Thousand Dollars lawful money of the United States of America, with interest from date at the rate of five per cent (5%) per annum.

This note, numbered 1, is one of the five notes of like date and principal amount, payable respectively on or before one (1), two (2), three (3), four (4) and five (5) years after date and aggregating in principal amount one million ($1,000,000.00) dollars.

SEATTLE BREWING & MALTING COMPANY,

By "E. G. SICK",
President.

Attest:

[Seal] "RALPH W. ALLEN",
Secretary.

(A note—the other four notes are identical in wording with the exception of the number of the note, the time of payment and the description of the particular note in the last paragraph.) [710]

PETITIONER'S EXHIBIT 9

Satisfaction of Mortgage

Know All Men By These Presents:

That the Anglo California National Bank of San Francisco and Laurence Tharp (successor to Frank H. Lougher) of San Francisco, California, as Trustees, the assignees of Rainier Brewing Company, Inc., a California corporation, to its interest under

the mortgage hereinafter described, do hereby certify that the mortgage made and executed on the 19th day of July, 1935, by Seattle Brewing & Malting Company, a Washington corporation, with its principal office located in the County of King, State of Seattle, as mortgagor, to Rainier Brewing Company, Inc., a California corporation, with its principal office for the transaction of business located in the City and County of San Francisco, State of California, as mortgagee, to secure the payment of the sum of Fifty Thousand Dollars ($50,000.00) and recorded on July 26, 1935, at 11:07 o'clock a.m., and of record in the Office of the Auditor of King County, Washington, in Volume 1346 of Mortgages on page 345, with the notes secured thereby, is wholly paid and satisfied and the undersigned do hereby consent that the same be fully discharged of record.

In Witness Whereof, The Anglo California National Bank of San Francisco has caused this instrument to be executed on its behalf by its officers thereunto duly authorized and its corporate seal hereunto to be affixed and the said Laurence Tharp has set his hand and seal this 2nd day of February, 1942.

THE ANGLO CALIFORNIA NATIONAL BANK OF SAN FRANCISCO,

[Seal] By LINDEN L. D. STARK,
Vice President.

By R. H. HOLMBERG,
Assistant Secretary.

LAURENCE THARP. [711]

State of California,
City and County of San Francisco—ss.

On this 2nd day of February, 1942, before me, the undersigned, a Notary Public in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared Linden L. D. Stark, known to me to be the Vice President, and R. H. Holmberg, known to me to be the Assistant Secretary of the corporation that executed the within instrument and also known to me to be the persons who executed it on behalf of the corporation therein named, and they acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, at my office in the City and County of San Francisco, the day and year in this certificate first above written.

[Seal] MARY J. CREECH,
Notary Public in and for the City and County of San Francisco, State of California.

My commission expires June 28th, 1945.

State of California,
City and County of San Francisco—ss.

On this 2nd day of February, 1942, before me, the undersigned, a Notary Public in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared Laurence Tharp, known to me to be the person described in and whose name is subscribed to the within instrument and he acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, at my office in the City and County of San Francisco, the day and year in this certificate first above written.

[Seal] MARY J. CREECH,
Notary Public in and for the City and County of San Francisco, State of California.

My commission expires June 28th, 1945. [712]

PETITIONER'S EXHIBIT 10

Seattle Brewing & Malting Company
Since 1878
3100 Airport Way MAin 2600
Seattle Washington
Executive Office
306 Marion Building

Emil G. Sick
President
Geo. W. Allen
Vice President and
Managing Director
W. H. Mackie
Manager
Ralph W. Allen
Secretary-Treasurer

April 11, 1942

Mr. Joseph Goldie, President
Rainier Brewing Company
1550 Bryant Street
San Francisco, California

Dear Joe:

Sorry that I did not see you when I went through San Francisco the other day. I have come home to a lot of problems and I hear from the East that no steel has yet been allocated of the 110,000 tons required to make crowns for beer and pop and that it will be at least ten days yet before we know what may be done, which I am afraid in the end will make for curtailment.

The whole of the future looks very uncertain. However, right now I happen to feel in an enterprising mood where I would take a gamble and here is a proposition for your company at the moment, which you can act on, if you wish.

If you want, you let us have a letter stating that the State of Idaho is added to our contract of April 23, 1935, under all the terms and conditions as contained therein for us to use the Rainier brand in consideration of our paying in the month of April the two notes due July 1, 1942, and July 1, 1943, together with accrued interest, then we will pay them.

This is an offer to you without engaging in any long discussions and conferences about a lot of other matters and is open only for immediate acceptance and makes no request for any discounts whatever, and is not a suggestion to bargain, if you want to accept it, O.K., otherwise forget it.

Best regards.

Yours very truly,

/s/ EMIL G. SICK,
President.

8 copies made 4/15/42—HJ
EGS:d [713]

PETITIONER'S EXHIBIT 11

April 13, 1942

Seattle Brewing & Malting Company
306 Marion Building
Seattle, Washington

Dear Sirs:

Reference is made to the agreement made and entered into on April 23, 1935, by and between Rainier Brewing Company, Inc., (one of the predecessors of the undersigned), party of the first part, and your company (then known as Century Brewing Association), party of the second part, which said agreement was amended by a memorandum of agreement executed on July 1, 1935, and agreements executed on July 18, 1935, and November 27, 1935. Said agreement, as so amended, is hereinafter termed "the agreement."

In consideration of your paying the principal and interest to date of payment of your two promissory notes, each in the principal sum of $200,000, and payable to the undersigned on July 1, 1942, and July 1, 1943, respectively, it is agreed that the territory described in the agreement shall be enlarged so as to include the State of Idaho, and you are hereby granted, subject to all the terms and provisions of the agreement, the sole and perpetual right and license to manufacture and market beer, ale, and other alcoholic malt beverages within the State of Idaho under the trade names and brands of "Rainier" and "Tacoma", without the payment of any royalty therefor other than the payment of the

remaining promissory notes heretofore given by the Seattle Brewing & Malting Company in settlement of all royalty payments under said agreement of April 23, 1935. The undersigned hereby expressly reserves the right to manufacture and/or market beer, ale, and other alcoholic malt beverages within the State of Idaho under trade names and brands other than "Rainier" and "Tacoma".

This amendment of the agreement has been authorized by the Board of Directors of the undersigned [714] and is subject to your acceptance, in writing, in the space indicated, after approval by your Board of Directors.

Very truly yours,

RAINIER BREWING COMPANY,

By /s/ JOSEPH GOLDIE,
President.

By /s/ F. S. SMITH,
Secretary.

The foregoing amendment to the agreement therein described is hereby accepted this 14th day of April, 1942.

SEATTLE BREWING & MALTING COMPANY,

By /s/ E. G. SICK,
President.

By /s/ RALPH W. ALLEN,
Secretary. [715]

PETITIONER'S EXHIBIT No. 12

Seattle Brewing & Malting Company
Since 1878
3100 Airport Way MAin 2600
Seattle, Washington
Executive Offices
306 Marion Building

Emil G. Sick
President
Geo. W. Allen
Vice-President and
Managing Director
W. H. Mackie
Manager
Ralph W. Allen
Secretary-Treasurer

November 25, 1942

Rainier Brewing Company
1550 Bryant
San Francisco, California

Gentlemen:

This letter will evidence our understanding that as you have released the Seattle Brewing & Malting Company and its successors in interest of and from all past, present or future claims or obligations existing or arising out of the provisions of Paragraph Fourteenth of the Miscellaneous Provisions of that certain agreement between your company and our company, dated April 23, 1935, with refer-

Petitioner's Exhibit No. 12—(Continued)

ence to the purchase of malt, we on our part, have released and do hereby release Rainier Brewing Company and its successors in interest of and from all obligations to sell or supply malt to the Seattle Brewing & Malting Company because of the provisions of said Paragraph Fourteenth, it being our understanding that by the exchange of these letters said Paragraph Fourteenth is to all intents and purposes cancelled as a subsisting paragraph of the agreement.

Very truly yours,

SEATTLE BREWING & MALTING CO.

By /s/ GEO. W. ALLEN,
Vice-President and Managing Director. [716]

(Copy)

1550 Bryant
San Francisco, California
November 25, 1942

Seattle Brewing & Malting Company
3100 Airport Way
Seattle, Washington

Gentlemen:

In consideration of your having arranged for the payment to us of the indebtedness evidenced by those two certain promissory notes dated July 1, 1940, and numbered 4 and 5, in the principal amount of $200,000 each, together with interest thereon from date to date of payment, less the sum of $10,000 on

Petitioner's Exhibit No. 12—(Continued)

account of such interest, the said notes having been given pursuant to an option exercised by you in connection with that certain agreement dated April 23, 1935, between Rainier Brewing Company, Inc., (to which the undersigned Rainier Brewing Company is the successor by merger), Party of the First Part, and Century Brewing Association, (to which your company is successor by change of name), Party of the Second Part, we would advise you that:

First. We have this day executed a direction to the Seattle-First National Bank, successor to the First National Bank of Seattle, as trustee, named in that certain trust indenture dated July 19, 1935, releasing the properties held by them pursuant to the terms of said trust indenture, from the lien thereof and directing the said bank to reconvey all property held by them pursuant thereto to Seattle Brewing & Malting Company.

Second. We have further, in consideration of your obtaining the advance payment of the two promissory notes hereinbefore referred to, released and do hereby release Seattle Brewing & Malting Company and its successors in interest, of and from all past, present or future claims or obligations existing or arising out of the provisions of Paragraph XIV of the Miscellaneous provisions of said agreement of April 23, 1935, with reference to the purchase of malt.

Third. We do further, in consideration of your obtaining the advance payment of the notes hereinbefore referred to, agree that the license granted

Petitioner's Exhibit No. 12—(Continued)

by the terms of said agreement of April 23, 1935, and the amendment thereof dated April 13, 1942, extending the territory covered thereby to include the state of Idaho, shall [717] be considered amended as to Paragraph XXIV of said agreement of April 23, 1935, so that the right to manufacture and sell beer under the trade names "Rainier" and "Tacoma" within the territories covered by said agreement may by the Seattle Brewing & Malting Company be extended to any plant or plants of any brewing company located within the states of Washington, Idaho or the Territory of Alaska of which the Seattle Brewing & Malting Company may be the owner or in control, this without the necessity of securing the written consent of the undersigned in connection therewith.

Fourth. We further enclose herewith copy of our corporate resolution authorizing the undersigned as officers of Rainier Brewing Company to execute the foregoing letter as the act and deed of Rainier Brewing Company.

Very truly yours,

RAINIER BREWING COMPANY.

[Seal] By JOSEPH GOLDIE,
President.

Attest:

F. S. SMITH,
Secretary. [718]

Petitioner's Exhibit No. 12—(Continued)
Rainier Brewing Company
Established 1878
November 25, 1942

Seattle-First National Bank
Second at Cherry
Seattle, Washington
Attention: Mr. C. L. LeSourd

Gentlemen:

Reference is made to the agreement made and entered into the 19th day of July, 1935, by and between Seattle Brewing & Malting Company, (formerly known as Century Brewing Association,) Grantor, Party of the First Part, the First National Bank of Seattle, a national banking association, (now known as Seattle-First National Bank,) Trustee, Party of the Second Part, and Rainier Brewing Company, Inc., (now known as Rainier Brewing Company,) Beneficiary, Party of the Third Part, pursuant to which agreement the property therein described was conveyed to you in trust for the purposes therein expressed, particular reference is made to Article V, Section 1 of said agreement.

The undersigned, Rainier Brewing Company, (successor by merger to Rainier Brewing Company, Inc.,) the present Beneficiary under said agreement, acknowledges that Seattle Brewing & Malting Company, pursuant to Paragraph Thirteenth of the agreement dated April 23, 1935, (which said agreement is more fully described and referred to in the July 19, 1935 agreement), has executed

Petitioner's Exhibit No. 12—(Continued)

and delivered to the undersigned the five (5) promissory notes provided for in said Paragraph Thirteenth and has paid the principal amount of said notes in full and interest thereon in accordance with the agreement of the parties, and acknowledges that accordingly and pursuant to the provisions of said agreement dated July 19, 1935, the properties described in or held by you pursuant to said agreement of July 19, 1935, are released and should be by your bank as trustees released from the terms and lien of said trust indenture, together with any and all sums of money held by you as security under or pursuant to the terms of said agreement because of any properties heretofore released from the lien of said trust indenture.

This letter shall constitute your authority to execute, acknowledge and deliver to the Seattle Brewing & Malting [719] Company, formerly known as Century Brewing Association, a proper reconveyance of all of the property, rights and interests held by you as Trustee under the provisions of the agreement and trust indenture of July 19, 1935, hereinbefore referred to, free and clear of any lien because thereof and to satisfy in full the mortgage evidenced thereby.

Very truly yours,

RAINIER BREWING COMPANY.

[Corporate Seal]

By JOSEPH GOLDIE,

President.

Petitioner's Exhibit No. 12—(Continued)

Attest:

F. S. SMITH,
Secretary.

CJM:avb [720]

This Indenture, Made this Twenty-fifth day of November, in the year of our Lord One Thousand Nine Hundred and forty-two, Between Rainier Brewing Company, a corporation duly organized and existing under and by virtue of the laws of the State of California, the party of the first part, and Seattle Brewing & Malting Company, a Washington corporation the party of the second part;

Witnesseth: That the said party of the first part, for and in consideration of the sum of One ($1.00) Dollar, lawful money of the United States, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents, remise, release and forever quitclaim unto the said party of the second part and to its successors and assigns all right, title, interest and estate of said party of the first part in and to all that certain lot, piece or parcel of land situate, lying and being in the County of King, State of Washington, and particularly bounded and described as follows, to-wit:

All the following described property situate in the City of Seattle, County of King, State of Washington: A tract of land comprising portions of Tracts 8 and 9 of the Julius Horton Tracts recorded in Vol. 3 of Plats, page 171, records of King County, Washington; also an unplatted tract of land

Petitioner's Exhibit No. 12—(Continued)

situated in the L. M. Collins Donation Claim lying between the easterly line of said tract 8 of the Julius Horton Tracts and the northerly line of former Nora Street in Sprague's Addition to the City of Seattle as recorded in Vol. 7 of Plats, Page 49, records of King County, Washington, also portion of vacated Nora Street as vacated by Ordinance No. 78 City of Georgetown, also portion of Block 1, Sprague's Addition and vacated alley in said block, also vacated portion of Juneau St. as vacated by Ordinance No. 35490 City of Seattle, the boundaries of said tract of land are more particularly described as follows: Commencing at the monument marking the intersection of the west line of said Julius Horton Tracts and the center line of Duwamish Avenue, and thence south 34° 23′ 39″ east along said center line 247.95 feet; thence north 55° 36′ 21″ east 30 feet to the easterly margin of Duwamish Avenue and the true place of beginning; thence south 34° 23′ 39″ east along said easterly margin 1389.08 feet; thence continuing along the northerly margin of Duwamish Avenue South 66° 47′ 45″ east 38.19 feet; thence south 70° 45′ 24″ east 44.91 feet to the northwesterly margin of the unvacated portion of Juneau Street as the same is set forth in Ordinance No. 35490 of Seattle; thence north 53° 41′ 06″ east 123.86 feet along said Juneau Street margin; thence south 80° 22′ 34″ east 33.58 feet along the northerly margin of Juneau Street; thence north 53° 41′ 06″ east 7.18 feet along said margin of Juneau Street; thence north 36° 18′ 54″ west 1472.41 feet to a point of

Petitioner's Exhibit No. 12—(Continued)

curve; thence to the right on a curve of 5877.22 feet radius 4.85 feet; thence south 55° 36′ 21″ west 151 feet more or less to place of beginning.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To Have and to Hold all and singular the said premises, together with the appurtenances, unto said party of the second part and to its successors and assigns forever.

In Witness Whereof, The said party of the first part has caused these presents to be executed by its President and attested by its Secretary and its corporate seal to be hereunto affixed, on the day and year first above written.

Signed, Sealed and Delivered in Presence of

RAINIER BREWING COMPANY.

[Corporate Seal]

By JOSEPH GOLDIE,
President,

And

F. S. SMITH,
Secretary. [721]

Petitioner's Exhibit No. 12—(Continued)

State of California,
City and County of San Francisco—ss.

On this 25th day of November A.D. 1942 before me personally appeared Joseph Goldie and F. S. Smith, to me known to be the president and secretary, respectively, of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed thereto is the corporate seal of said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Seal] /s/ JAMES F. McCUE,
Notary Public in and for the City and County of San Francisco, State of California.

My commission expires 9 May 1946. [722]

Whereas, an agreement was made and entered into the 23rd day of April, 1935, by and between Rainier Brewing Company, Inc. (the predecessors of this Company), Party of the First Part, and Century Brewing Association (now known as Seattle Brewing & Malting Company), Party of the Second Part (hereinafter referred to in these resolutions as "Seattle"), which said agreement, as subsequently amended, grants to Seattle, upon the

Petitioner's Exhibit No. 12—(Continued)

terms and conditions therein expressed, the sole and exclusive perpetual right and license of manufacturing and marketing beer, ale and other alcoholic malt beverages under the trade names and brands "Rainier" and "Tacoma" within the States of Washington and Idaho and the Territory of Alaska; and

Whereas, pursuant to Paragraph Thirteenth of said agreement, Seattle executed and delivered to this Company the five (5) promissory notes of Seattle, each in the principal sum of $200,000.00, dated July 1, 1940, bearing interest at the rate of five per cent per annum and maturing, respectively, on July 1, 1941, July 1, 1942, July 1, 1943, July 1, 1944, and July 1, 1945, of which said notes Seattle has paid the first three maturing respectively on July 1, 1941, July 1, 1942, and July 1, 1943, and there remains unpaid the two of said five promissory notes maturing respectively on July 1, 1944, and July 1, 1945, together with interest thereon from July 1, 1940, at the rate of five per cent per annum; and

Whereas, to secure the performance of the covenants and agreements of Seattle contained in said agreement dated the 23rd day of April, 1935, a trust agreement was made and entered into the 19th day of July, 1935 by and between Seattle, as Grantor, Party of the First Part, the First National Bank of Seattle (now known as Seattle-First National Bank), as Trustee, Party of the Second Part, and Rainier Brewing Company, Inc. (the predecessor of this company), Beneficiary, Party of the Third

Petitioner's Exhibit No. 12—(Continued)

Part, under which said trust agreement certain property was placed in trust upon the understanding that said property would be released from the lien of said trust agreement upon the happening of one or the other of the following events, a) the performance by Seattle of all of its covenants and agreements contained in said agreement dated April 23, 1935; or b) should Seattle elect to deliver to this company the five (5) promissory notes provided for in Paragraph Thirteenth of said agreement of April 23, 1935, upon the full payment of the principal amount of said promissory notes and interest thereon; and

Whereas, Seattle has offered to pay to this company the remaining two promissory notes maturing respectively July 1, 1944, and July 1, 1945, together with interest thereon at the rate of five per cent per annum from July 1, 1940, to date of payment, less the sum of Ten Thousand Dollars ($10,000.00) on account of such interest, in consideration of a) the release of the property now held in trust under said July 19, 1935 agreement; b) the release by this company of Seattle from all past, present or future claims or obligations existing or arising out of the provisions of Paragraph Fourteenth of said April 23, 1935 agreement, which said paragraph relates to the purchase of malt; and c) the consent of this company to the amendment of Paragraph Twenty-fourth of said agreement of April 23, 1935, so as to permit [723] Seattle to authorize beer to be manufactured and sold under the trade

Petitioner's Exhibit No. 12—(Continued)

names "Rainier" and "Tacoma" within the territory covered by said agreement by any plant or plants of any brewing company located within the States of Washington and Idaho or the Territory of Alaska, and owned or controlled by Seattle without, in each instance, requiring the written consent of this company; and

Whereas, there has been submitted to this Board of Directors the documents required to accomplish the foregoing, copies of each of which, identified by the initials of the Secretary of this company, are attached to the minutes of this meeting,

Now, Therefore, Be It Resolved, that Mr. Joseph Goldie as President and Mr. F. S. Smith as Secretary be, and they hereby are authorized and directed, for and in behalf, and in the name of this company, to execute and deliver to Seattle upon the payment by it of the sum of Four Hundred Thousand Dollars ($400,000.00), together with interest thereon at the rate of five per cent per annum from July 1, 1940 to date of payment, less the sum of $10,000.00 on account of such interest, the following:

1. A written authorization in the form submitted at this meeting addressed to Seattle-First National Bank, authorizing the release of the property now held in trust under the July 19, 1935 agreement above described;

2. A quitclaim deed in the form submitted to this meeting whereby this company quitclaims to

Petitioner's Exhibit No. 12—(Continued)

Seattle all right, title and interest in and to the real property now held in trust under said agreement dated July 19, 1935;

3. A letter addressed to Seattle Brewing & Malting Company in the form submitted to this meeting releasing Seattle from liability under Paragraph Fourteenth of said agreement of April 23, 1935, and consenting, to the extent hereinabove set forth, to the modification of Paragraph Twenty-fourth of said agreement;

4. A certified copy of these resolutions;

5. The two promissory notes of Seattle Brewing & Malting Company, each in the principal sum of Two Hundred Thousand Dollars ($200,000.00), dated July 1, 1940, bearing interest at the rate of five per cent per annum and maturing July 1, 1944, and July 1, 1945, which said promissory notes, in accordance with the request of Seattle, have been endorsed as follows:

> "Pay to the order of Seattle-First National Bank, Seattle, Washington, without recourse"

and

Be It Finally Resolved that to accomplish the payment to this company of the amount due it and the delivery to Seattle of the documents above described, said officers be and [724] they are hereby authorized and directed to execute and deliver to the Anglo California National Bank of San Francisco such escrow instructions as they, in their opinion, deem appropriate.

Petitioner's Exhibit No. 12—(Continued)

I, F. S. Smith, do hereby certify that I am, and at all times herein mentioned have been, the Secretary of Rainier Brewing Company, a California corporation; that the above and foregoing is a full, true and correct copy of a resolution of the Board of Directors of said Rainier Brewing Company duly passed and adopted at a special meeting of the Board of Directors held on the 25th day of November, 1942; that a quorum of said Board was present and acted throughout said meeting, and that said resolution was unanimously adopted.

I further certify that said resolution has not been revoked nor modified in any way and is in full force and effect.

Witness my signature and the seal of said corporation this 25th day of November, 1942.

[Seal] F. S. SMITH,
Secretary, Rainier Brewing Company. [725]

PETITIONER'S EXHIBIT No. 31

Prohibition in the United States, Local Option

Georgia, local option, after many years of trial, was of benefit chiefly as a demonstration of how NOT to solve the problem.

This leaves Mississippi the only one of the states adopting prohibition in the pre-national prohibition period which might furnish a justifiable argument for the local option step theory. But there local option was used as a means to head off prohibition. The leading history of prohibition in Mississippi

Petitioner's Exhibit No. 31—(Continued) states that in 1886, the year the local option was was enacted, "beyond all doubt, the most substantial citizens favored prohibition."[7] It also says: "In the years clustering close around 1886, as well as in that year itself, many conventions were held all over the state, including a statewide convention once a year, and also hundreds of fine prohibition articles appeared in the various papers in the state friendly to prohibition."[8] As in other local option states, these great meetings and articles died out. In 1890, when a state constitutional convention was held, strong effort was made to get prohibition incorporated in the state constitution. But local option helped to prevent it.[9] In 1902 there was another movement for state prohibition but it failed. It thus took twenty-two years to take the step from the passage of the local option law in 1886 to the adoption of state prohibition in 1908.

Virginia, which voted for state prohibition in 1914, probably more than any other state furnishes an apparent argument for the step theory. Its record is exceptional in that more stages were involved in the process of reaching prohibition than in any other state. Since 1886 there had been a local option law which had been supplemented by laws passed in 1904 and 1908. By 1914 of the one hundred counties, sixty were no-license, although these con-

---

[7]T. J. Bailey, Prohibition in Mississippi, 1917, p. 60.
[8]Ibid., p. 69.
[9]Ibid., p. 80.

Petitioner's Exhibit No. 31—(Continued)

tained only five cities with a population of five thousand or more.

The Virginia Legislature did not pass a prohibitory law, neither did it submit the question to the people. The complicated process was as follows:

A. The Legislature passed an enabling act permitting the people to vote for or against prohibition conditional upon the obtaining of signatures requesting such a vote equal in number to one-fourth of the voters at the preceding state election.

B. A petition for such signatures was circulated and an election called.

C. The people voted for the principle of prohibition on September 22, 1914, by a majority of 30,365, nearly 60 per cent voting in favor of prohibition.

D. The law for carrying the principle into effect had to be enacted by the Legislature although certain features were included in the enabling act.

E. The interval between the vote of the people and the going into effect of the law was over twenty-five months, the longest interval of any state, with one exception. The law went into effect November 1, 1916.

F. The lax provisions of the law, it permitting the manufacture of certain classes of liquor for sale outside the state and permitting the bringing in of liberal quantities of liquor for personal use, made it in substance an anti-saloon law rather than a prohibition law. The importation from other states

Petitioner's Exhibit No. 31—(Continued)

was remedied only by federal legislation when Congress passed the Reed Amendment in 1917.

Thus the requirement of both special legislation and a petition to bring on a vote, the long interval, and the partial provisions of the law constituted three stages or steps additional to those customary in most of the states. In Virginia, going from local option to prohibition was more like an obstacle race than a step. One of the reasons seems to have been that some of the leaders of the Anti-Saloon League there were obsessed to an extraordinary degree by the step theory and permitted that theory to dominate their program.

2. Local option was subject to such continuous, and sometimes violent, fluctuations and reactions that instead of being a step toward prohibition, it frequently led in the opposite direction.

The earlier waves and recessions in a number of states have been referred to. There remains to be studied the period preceding 1914. A study follows, comparing the number of dry counties in the different states in 1914 with the number in 1908. In two New England states, instead of counties, the cities and towns are taken as the basis of comparison. The year 1908 is taken because that was the first year of a series of years when adequate facts are easily accessible.

The results show that in ten states there was a decrease in the number of dry counties. In three, Ohio, Indiana and Oregon, there was a very decided falling off from previous years. In Ohio there was

Petitioner's Exhibit No. 31—(Continued)

a decrease in dry counties from sixty-two out of eighty-eight in 1910, to forty-five in 1914, due to dry counties voting wet. This was followed by a reduction to eighteen dry counties in 1916, due to the repeal of the county option law. [745]

In Indiana and Oregon the falling off was due to the repeal of the county option law, Indiana falling from seventy dry counties in 1909 to twenty-four in 1912 and thirty in 1914. In Oregon the dry counties fell from twenty-one in 1908 and twenty-three in 1909, to five in 1914.

Other recessions were: Illinois, thirty-six to thirty-three; Missouri, seventy-seven to seventy-four; Colorado, eleven to ten; California, five to one, and Washington, ten to six.[10]

In Massachusetts there was a decline from seventeen no-license cities in 1908, and twenty in 1909,

---

[10]The information upon which this study was made was obtained chiefly from the annual Year Books of the Anti-Saloon League. The amount of dry territory in a state in a mentioned year is that given in the Year Book for that year and is presumed to be the area dry at the beginning of that year. This may not be true in all cases but inasmuch as most of the data used is for the purpose of comparison the general conclusions are not seriously affected even though in some cases the data may belong to the year preceding instead of the year mentioned. In some cases the figures may not be absolutely accurate but where other or later information has indicated a correction it has been made. In general the figures of the leading organization advocating local option have been assumed to be substantially correct.

Petitioner's Exhibit No. 31—(Continued)

to fourteen in 1914. No-license towns fell from two hundred and sixty to two hundred and forty-seven. In Connecticut the dry towns decreased from ninety-six to eighty-seven, out of one hundred and sixty-eight in the state, and the dry towns did not include any large towns.

As against ten states showing decreases in the number of dry counties there were seven states showing increases. The largest increase was in Michigan where the number rose from one in 1908 to fifty in 1911, and decreased to thirty-three in 1914. By 1915 a little less than a third of the saloons of Michigan had been closed under local option. By the time state prohibition went into effect in 1918 forty-five of the eighty-three counties had voted out the saloon, but there remained 3,285 saloons and 79 breweries which did not hesitate to sell liquor in so-called dry territory, wherever they could find purchasers.

The next largest increase was in Virginia where the dry counties increased from fifty in 1908 to sixty-six in 1914. But here the increase in dry counties was accompanied, in the later years of local option, by an increase in saloons in the state as a whole. In 1910 there were about six hundred saloons in the state. In 1911 there were about six hundred and eighty saloons and one hundred and sixty-four other liquor centers, including sixty hotels, sixteen social clubs, fifty-three distilleries, ten breweries, fourteen wholesale liquor dealers and eleven dispensaries, making eight hundred and for-

Petitioner's Exhibit No. 31—(Continued)

ty-four in all. In 1914, when the state-wide prohibition election was held, there were nine hundred and fourteen liquor licenses, the increase having been due probably to the larger concentration in the wet centers and the expansion of the liquor traffic in the centers where licensed.

In Florida the dry counties increased from thirty-five to thirty-seven; in Arkansas, from fifty-eight to sixty-three; and in Texas, from one hundred and fifty-two to one hundred and seventy-three out of two hundred and forty-nine. But in none of these states was local option a step to prohibition, as all these defeated state prohibition in this period; Florida, in 1910; Texas, in 1911, and Arkansas, in 1912.

Furthermore, in Texas the number of dry cities having a population of over 10,000 fell from twelve in 1911 to six in 1914.

Maryland and Nebraska made small gains, the former from ten counties to thirteen, and the latter from twenty-one to twenty-nine, falling again in 1915 to twenty-seven.

Idaho was practically the only state which made a decided step toward state prohibition. There the number of counties increased from fifteen to twenty-one out of thirty-three. Idaho was a young, progressive, western state with a unique record. Starting without any local option law and known as all saloon territory in 1909, it advanced to statutory prohibition in 1915, with every political party in in the state supporting prohibition by party platform. In 1916 it placed prohibition in the state constitution by a vote of 90,576 to 35,456.

Petitioner's Exhibit No. 31—(Continued)

The brevity of the period with which they stopped with local option indicates that the splendid people of Idaho, as well as the better citizens in the other states, were not seeking merely local option, but they were earnestly seeking to be rid of the whole liquor traffic. The movement in Idaho was primarily a prohibition movement hindered, for a short time only, by local option due to the fact that at first the Legislature compromised on local option when the people wanted prohibition. In other words, local option was a compromise by the Legislature of 1909, but the people were not satisfied with that and they kept up the fight until they committed all the political parties to the principle and secured prohibition.

In five states the number of dry counties remained the same. In one the number went up and then down, and the rest of the states were either prohibition states or where the laws were of little importance.

From this survey the conclusion is inevitable that the effect of local option as a step to state prohibition, prior to the time of the concerted movement toward national prohibition, was negligible. [746] Local option as a method had reached its maximum and was beginning its decline prior to 1914. The predominant trend in the local option states was in the direction opposite to prohibition.

3. The step away from prohibition was still more accentuated in the cities.

Petitioner's Exhibit No. 31—(Continued)

Of the thirty-one cities in the non-prohibition states having a population of over 25,000, which at some period between 1908 and 1912 were under local no-license, only twelve were able to maintain a continuous no-license policy until 1914. Nineteen of the thirty-one swung back to the saloon. Three of them subsequently oscillated back again to no-license, but sixteen of the thirty-one remained wet until state or national prohibition was achieved.

The striking fact is that, outside of Massachusetts, only three cities of over 25,000 in all of the non-prohibition states of the whole country maintained a no-license policy for any length of time.

These three were Berkeley and Pasadena in California and Shreveport in Louisiana. Of these, Berkeley and Pasadena should not be credited to the local option method. Both were residence communities adjacent to great cities. Berkeley is the seat of the state university, around which a dry zone was established by state law, and Pasadena had never had a saloon in its history. So, outside of Massachusetts, local option can be credited with the dry policy of just one large city, Shreveport, Louisiana, with a population of 28,015, which adopted local no-license in 1910.

Of the nine Massachusetts cities most were close to Boston and all were adjacent to unlimited liquor supplies.

According to the census of 1910 there were two hundred and twenty-nine cities in the United States of over 25,000 population. Of these, including the

Petitioner's Exhibit No. 31—(Continued)

nine in Massachusetts, by 1914 there were just ten dry as the net result of local option, after all the years of labor in its behalf. At the same time there were twenty cities of that size in the states having state prohibition.

4. Another phase of the step theory should be considered, and that is the length of time which it took after the passage of a local option law before prohibition was secured. Note especially the record of even those states which are chiefly cited as examples of the step contention. In Georgia it took twenty-two years from the passage of the general local option law in 1885 to the adoption of state prohibition in 1907. In Mississippi it took twenty-two years, from 1886 to 1908; in Virginia, twenty-eight years, from 1886 to 1914; in Texas, forty-three years, from 1875 to 1918; in Kentucky, forty-five years, from 1874 to 1919; in Florida, thirty-one years, 1887 to 1918. In other words in almost the entire South the more appropriate characterization during a long period was that local option was a status rather than a step.

In the New England states, Massachusetts had voted on no-license every year since 1881 with no permanent progress. Connecticut had had town option for a generation with very little improvement. Other local option states never took the step. Further illustrations are unnecessary.

Foreign countries which might be misled to enter upon a step program should take these facts into consideration.

Petitioner's Exhibit No. 31—(Continued)

5. That local option as a step was not needed was demonstrated by the fact that several of the states which had not had local option of any consequence rolled up big majorities for prohibition not only in the earlier periods but also in the later period.

Arizona, with only two dry counties, adopted prohibition the first time it was submitted in 1914. Montana, with one dry county, carried prohibition in 1916 by a majority of 28,886. Wyoming and Nevada, each without a dry county and regarded as exceedingly wet, adopted prohibition by large proportional majorities the first time they had a referendum, in 1918. In Wyoming every county gave a majority for prohibition.

These states all disprove the claim that local option as a step was necessary.

6. Local option was not a step in the states which gave the largest percentage of votes for prohibition.

Of the twenty-two states adopting prohibition by popular vote in the period 1907 to 1919 there were five which gave a vote of 70 per cent or more in favor of prohibition. Of these five giving the largest proportional vote for prohibition not one was a typical local option state. Of the three having the highest percentage of prohibition votes, Wyoming, 75.2 per cent; New Mexico, 73.1 per cent, and Utah, 73 per cent, none had gone through the county option stage. The fourth, Idaho, with 71.7 per cent, has been discussed above, and the fifth, South Caro-

lina, with 71.3 per cent, was evidencing its revulsion against the dispensary system.

7. Not only was local option not a step but it hindered the attainment of prohibition because of its own inherent defects and limitations. It did not elicit the full strength of the anti-liquor sentiment. In the various popular votes that have been taken the [747]

PETITIONER'S EXHIBIT No. 32

Century Brewing Association
814 Second Avenue
Seattle, Washington

April 11, 1935.

Mr. Louis Hemrich, President
Rainier Brewing Company
1550 Bryant Street
San Francisco, California

Dear Mr. Hemrich:

I advised you verbally this afternoon that in the light of some of the objections taken to the deal as we made it in San Francisco, some of my associates were not keen to go through on that basis.

I suggested an alternative way of dealing with the problem and I am complying with your request that I submit it by letter so that you and your associates may consider the matter.

I think our company would be willing to make the Rainier Brewing Company this proposition: We

Petitioner's Exhibit No. 32—(Continued)

would buy the brewery plant at Georgetown for $200,000.00 cash provided that your company also permit us to manufacture and sell your Rainier and Tacoma brands of beer in the State of Washington and in Alaska for all time, and to have the name "Seattle Brewing & Malting Company." For this privilege we would pay your company a minimum consideration of $50,000 a year and we would be prepared to pay on a graduated basis according to barrelage whereby if we succeeded in selling say 100,000 barrels of your brands in a year, half in bottles, your royalty fees would then amount to $125,000.00 a year, say at the rate of .75c per bulk barrel when turned out in bottles and at the rate of .50c per bulk barrel when turned out in draught. In any event the scale could be so graduated that starting with the $50,000.00 minimum payment based on say 60,000 barrels, the rate of payment would go up in ratio as the production increased. Any such arrangement would necessarily entail a lesser rate per barrel if our company assumed all the risks attendant on price maintenance or collapse, on strikes and other imaginable contingencies, although any such agreement would have to provide for the possibility of prohibition or local option.

This proposition would also entail the entry of yourself and Mr. Goldie as well as Mr. Allen into our company and on our Board of Directors. We would be pleased to have Mr. Hemrich act as Chair-

Petitioner's Exhibit No. 32—(Continued)

man of the Board, Mr. Goldie to be a Vice-president and Mr. Allen of course to be our Managing Director, and likewise the manufacture and quality of Rainier and Tacoma brands to be subject to your approval.

On the above basis, we would of course be very pleased on the expiration of existing contracts to give consideration to the use of your malt largely, both here and at other plants.

Proceeding along the above lines we would accomplish all the good features of what might have been expected to accrue from the stock merger we have heretofore been considering. This alternative arrangement could furthermore be effected without any great unsettlement to either business or shareholders. I will be glad to hear after you discuss this with your associates whether you are interested. We believe some reasonable and fair constructive alliance between our respective companies carried on in a local name as suggested would prove beneficial to both interests, probably more so a great deal than our competition against each, and would also prove to be a great stabilizer to the industry in the Northwest.

Yours very truly,

/s/ EMIL G. SICK,
President. [748]

PETITIONER'S EXHIBIT No. 33

No. 13376.

Articles of Incorporation of
Rainier Brewing Company

Know All Men by These Present: That we, E. F. Sweeney, John T. Campion and L. C. Gilman, each one and all of us citizens of the United States and citizens and residents of the State of Washington, being desirous of forming a corporation for the purpose hereinafter specified, do hereby associate and incorporate ourselves together and form a corporation under the laws of the State of Washington relating to private corporations, and do make, subscribe, execute and acknowledge these Articles of Incorporation thereof:

Article I.

The corporate name of this corporation shall be "Rainier Brewing Company."

Article II.

The objects for which said corporation shall be and is hereby formed, are the following:

To own, operate and carry on breweries and manufacture and sell beer, ale, porter and other malt liquor, products, merchandise and preparations:

To own and operate ice works and manufacture and sell ice:

To own and operate bottling works and machinery, and to manufacture, bottle, pack and sell bottled liquors:

Petitioner's Exhibit No. 33—(Continued)

To own and operate cooper shops and barrel factories, and manufacture and sell barrels, casks and cooperage materials and products:

To own and operate cold storage plants and machinery, and engage in the business of cold storage:

To own and operate malting plants and machinery, and manufacture and sell Malt, Malt extracts and Malt products, preparations and merchandise:

To buy and sell, handle and deal in hops and grain, and to own and operate grain elevators:

To own and operate refrigerator cars and cars for shipping and transporting liquors and perishable products, and to manufacture and sell and deal in refrigerators and refrigerator cars:

To buy and sell, handle and deal in brewing machinery, malting machinery, ice-making machinery, cold storage machinery, cooperage machinery, bottling machinery and commodities, merchandise, materials and products used in connection with the business of brewing, malting, bottling, manufacturing ice, and cold storage.

This Corporation shall have power:

To purchase, take, acquire, accept, lease, rent, hold, own, possess, use and enjoy any and all real and personal property and any interests and estate therein which it shall deem desirable, useful, necessary or convenient in connection with its business or in furtherance of its interests, including promissory notes, choses in action, mortgages, bonds and other securities:

Petitioner's Exhibit No. 33—(Continued)

To sell, lease, rent, dispose of, grant, convey away, transfer, pledge, encumber and mortgage at any time all or any of its real or personal property and any estate or interest therein:

To borrow money, contract debts, make contracts and agreements, and assume, guarantee and obligate itself to pay, discharge or perform any debt, contract or obligation of any other person, firm, company, association or corporation, and to make promissory notes and choses in action, and to make, issue and sell negotiable coupon bonds, and for the purpose of securing the payment or performance of any note, bond, contract, debt or obligation of or assumed or guaranteed by this Corporation, to make mortgages, deeds of trust and pledges of all or any of its real and personal property:

To raise, grow, cultivate and produce, hops, barley, grain and other products used in the manufacture of beer or malt: [751]

To own and carry on boarding houses, lodging houses, mess-houses and stores, and to buy and sell and deal in goods, wares and merchandise:

To own, lease, use and carry on wharves, docks and storage houses:

To own, lease, maintain and carry on saloons, and buy and sell wines, liquors and cigars, and to buy and sell saloon and bar fixtures and fittings:

To have and enforce a lien for the payment of such indebtedness upon the shares of its capital stock owned by any person who may be in any man-

Petitioner's Exhibit No. 33—(Continued)

ner indebted to the Corporation, and to prevent the transfer of such shares until such indebtedness be paid:

To loan and invest any of its moneys or funds, and to take, own, hold, collect and enforce promissory notes, choses in action, bonds, mortgages and securities, and to sell, transfer, and dispose of the same:

To take, own and hold and sell, transfer and dispose of shares of the capital stock of any other company or corporation:

And, generally, to do and perform any and all acts and things which are germane to or which will tend to aid and accomplish the purposes of its incorporation and promote its interests.

Article III.

The amount of the capital stock of this Corporation shall be five hundred thousand dollars ($500,000.00), and it shall be divided into five thousand (5000) shares of one hundred dollars ($100.00) each.

Article IV.

The duration and time of existence of this Corporation shall be fifty (50) years.

Article V.

The number of Trustees of this Corporation shall be three (3), and E. F. Sweeney, John T. Campion and L. C. Gilman—each [752] one and all of them being citizens of the United States and citizens and

Petitioner's Exhibit No. 33—(Continued)

residents of the State of Washington,—are hereby constituted and appointed and shall be Trustees of this Corporation and manage its concerns and affairs until the first day of February, A. D. 1904.

Article VI.

The principal office and place of business of this Corporation shall be located at the City of Seattle, in the County of King, State of Washington.

In Witness Whereof, We, the said E. F. Sweeney, John T. Campion and L. C. Gilman, have hereunto set our hands and seals this 31st day of July, A. D. 1903, in triplicate hereof.

[Seal] E. F. SWEENEY,
[Seal] JNO. T. CAMPION,
[Seal] L. C. GILMAN.

Signed, sealed and delivered in presence of
James B. Murphy
W. M. Williams.

State of Washington,
County of King—ss.

This Is to Certify, That on this 31st day of July, A. D. 1903, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally came E. F. Sweeney, John T. Campion and L. C. Gilman, to me known to be the individuals described in and who executed the foregoing articles of incorporation, and acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned.

Petitioner's Exhibit No. 33—(Continued)

Witness my hand and official seal the day and year in this certificate first above written.

JAMES B. MURPHY,
Notary Public in and for the State of Washington, residing at the City of Seattle, in said State.
My Commission Expires Sept. 19, 1903. [753]

(Endorsed.)
State of Washington—ss.
Filed for record in the office of the Secretary of State Aug. 7, 1903.
Recorded in Book 39, Page 147.
Domestic Corporation.

SAM H. NICHOLS,
Secretary of State. [754]

PETITIONER'S EXHIBIT No. 38

I, F. S. Smith, do hereby certify that I am, and at the times herein mentioned was, the duly elected, qualified and acting Secretary of Rainier Brewing Company; that as such I have custody and control of the minute books of said company; that attached hereto are true and correct copies of the following:

1. The call issued by the President of said Company for a special meeting of its Board of Directors to be held July 2, 1940; and

2. The resolutions adopted said meeting.

That said call and resolutions have not been amended or revoked and are still in full force and effect.

In Witness Whereof I have hereunto set my hand and the seal of said company this 21st day of July, 1945.

[Seal] /s/ F. S. SMITH,
Secretary, Rainier Brewing Company. [773]

Rainier Brewing Company
1550 Bryant Street
San Francisco 3

July 1, 1940

Mr. F. S. Smith, Secretary
Rainier Brewing Company
705 Standard Oil Building
San Francisco, California

Dear Sir:

The undersigned, as President of Rainier Brewing Company, pursuant to the authority contained in Section 8 of Article III of the By-Laws of the Company, hereby calls a Special Meeting of the Board of Directors of said Company to be held at the principal office of the Company for the transaction of business, 1550 Bryant Street, San Francisco, California, on Tuesday, July 2, 1940, at the hour of 3:30 o'clock P.M. for the following purposes:

(1) Considering a recent proposal submitted by Seattle Brewing & Malting Company for the amendment of its contract and approving the action of the officers of this company in relation thereto.

(2) Considering, and if advisable, taking action upon any and all matters relating to the tender by Seattle Brewing & Malting Co. of its promissory notes aggregating the sum of $1,000,000.00 for a perpetual license to use the trade names "Rainier" and "Tacoma" in the State of Washington and the Territory of Alaska and the acceptance of said notes by Rainier Brewing Company as a consideration therefor, and also authorizing, if necessary, to consummate said transaction, the execution and delivery of a Supplemental Trust Indenture to The Anglo California National Bank and Laurence W. Tharp, Trustees, supplementary to the Indenture securing the payment of the issue of $1,200,000.00 of five per cent bonds of this company.

(3) Such other business as may properly come before the meeting.

Very truly yours,

/s/ JOSEPH GOLDIE,
President, Rainier Brewing Company.

:GD [774]

Resolutions Adopted at Special Meeting of Board of Directors of Rainier Brewing Company Held on Tuesday, July 2, 1940

Resolved, that the action of the officers and Executive Committee of and counsel for, this corpora-

tion in refusing to accept the offer of Seattle Brewing & Malting Company, made through its attorney, Stephen F. Chadwick, for the amendment of the Agreement of April 23, 1935, between Rainier Brewing Company, Inc. (predecessor of this corporation) and Century Brewing Association, now known as Seattle Brewing & Malting Company, so as to provide for the payment of $400,000 in cash before January 2, 1941, and the execution and delivery by Seattle Brewing & Malting Company to this corporation of promissory notes for the sum of $600,000, payable over a period of five years in consideration of this corporation granting to Seattle Brewing & Malting Company perpetual license to manufacture and sell its products under the trade names of "Rainier" and "Tacoma" in the States of Oregon and Idaho without further consideration or payment of royaltes, be, and the same is hereby fully approved, ratified and confirmed; and

Be It Further Resolved, that the officers of this corporation be, and they are hereby, fully authorized, empowered and directed to give consent on behalf of this corporation to the acceptance by The Anglo California National Bank of San Francisco of the five promissory notes, each for the sum of $200,000 and aggregating the principal amount of $1,000,000, tendered by Seattle Brewing & Malting Company, pursuant to the terms of Paragraph Thirteenth of the Agreement of April 23, 1935, between Rainier Brewing Company, Inc. (predecessor of this corporation) and Century Brewing Association, now known as Seattle Brewing & Malting Company, sub-

ject to the advice of counsel for this corporation as to the legality of the transaction and of said promissory notes. [775]

Resolved, That the officers of this corporation be, and they are hereby fully authorized, empowered and directed to make, execute and deliver to The Anglo California National Bank of San Francisco and Laurence W. Tharp, Trustees, under that certain Indenture dated as of September 15, 1937, between Rainier Brewing Company, Inc. (predecessor of this corporation) and The Anglo California National Bank of San Francisco and Frank H. Lougher, Trustees, to secure payment of an authorized issue of $1,200,000 First Mortgage and Collateral Trust 5% Serial Bonds, a Supplemental Indenture in such form as shall be required and as shall be approved by said officers and counsel for this corporation, relating to the deposit with said Trustees of five promissory notes of Seattle Brewing & Malting Company, each dated July 1, 1940, and each for the principal sum of $200,000, payable respectively on or before one, two, three, four and five years after the dates thereof with interest at the rate of 5% per annum. [776]

PETITIONER'S EXHIBIT No. 41

John F. Forbes & Company

San Francisco, October 15, 1942.

Memorandum:

In re: Rainier Brewing Company

We have been asked to determine the fair value

Petitioner's Exhibit No. 41—(Continued)

as of March 1, 1913, of the trade name "Rainier" applied to the beer manufactured and sold in the State of Washington by the Seattle Brewing and Malting Co. Our study of the general problem of goodwill evaluation and of the affairs of this specific company and those of its predecessor company, Seattle Brewing and Malting Company, leads us to the conclusion that a fair and equitable value for the goodwill attaching to that trade name at the given time and place is $1,355,592.03.

(1) The first step in determining the goodwill value of the name Rainier beer is to calculate the total goodwill value of the company manufacturing and distributing this product. This total figure will be a composite of (a) the goodwill of the trade name Rainier beer in so far as that contributed to the profitability of the company and (b) all other goodwill elements enjoyed by the company.

The concept of commercial goodwill is a commonplace of modern business practice. Goodwill is fundamentally a convenient term for describing the habit-creating power of a business enterprise. Persons are led for various reasons to buy a certain branded product. They find this product satisfactory and continue to buy it, specifying it by brand name. The purchase of this item becomes a habit. The sum of the purchasers' habits becomes the basis of the goodwill of the manufacturer of the article in question. This habit-causing faculty is recognized to possess a very real monetary value.

Petitioner's Exhibit No. 41—(Continued)

Goodwill of a business enterprise is evaluated, according to standard accounting procedure, by capitalizing the profits of the concern which are in excess of a normal return on the money invested in the assets used in ordinary operations.

The application of the excess profits formula to the earnings of the Seattle Brewing and Malting Co. in the State of Washington for the five years ended June 30, 1912, gives the following schedule:

Average earnings for five years ended June 30, 1912	$ 315,077.29
Interest at 8% on $1,792,979.80, the invested capital	143,438.38
Excess earnings	**$ 171,638.91**
Capitalization at 12½%	$1,206,213.36

The percentages used in this calculation of 8% as a normal return on the investment and 8 years' purchase as the rate of capitalization are based upon an examination of the earnings record of the Seattle Brewing and Malting Co. From these figures (Appendix A), we gain a clear picture of a stable business with steadily rising profits and every reason for the expectation of an indefinite continuation of this favorable situation.

(2) The second step in determining the goodwill value of the trade name Rainier beer is to eliminate from the figure $1,206,213.36, just calculated, all contributions to the excess profits of the Seattle Brewing and Malting Co. made by factors other than the trade name Rainier beer. The remainder

Petitioner's Exhibit No. 41—(Continued)

will be the goodwill value of the trade name to the extent that that was reflected in the excess earnings of the company.

It frequently happens that the manufacturer submerges his own identity and that of the company in advertising and publicizing a branded product. The result of this policy is that the full measure of the company's goodwill accrues to the trade name of that product. Discussing this situation, J. M. Yang says (Goodwill and other intangibles, their significance and treatment in accounts, N. Y., Ronald Press, 1927, p. 61) "* * * The mark or name which becomes the necessary channel for the conveyance of goodwill in the advanced stage of business development may become the direct object of value."

This is well illustrated in the case in point. From the outset of its operations, the Seattle Brewing and Malting Co. advertised the name of its product, Rainier beer, at great cost and made no attempt to build up a separate goodwill value for the company. The reason for this emphasis on the trade name is clear. [781] Rainier beer was widely known before the Seattle Brewing and Malting Co. came into existence. By March 1, 1913, Rainier beer had been sold in Washington uninterruptedly for fully 30 years. The name had outlived two companies and was being used profitably by the third successive company since the 1870's.

It might be noted parenthetically that in 1942 the benefits of the name Rainier beer are being enjoyed in Washington by the sixth successive con-

Petitioner's Exhibit No. 41—(Continued)

cern to acquire this valuable intangible property.

The advertising policy of a manufacturing company is only one factor contributing to its goodwill. In this case, only the good name of the product benefited by advertising. Other factors listed in accounting treatises which should be considered in determining the company's separate goodwill are: (a) The company's reputation for honesty and fair dealing. (b) The unusual devotion of both management and employees to the best interests of the customers. (c) The enjoyment of a monopoly position in the trade. And (d) The occupation of particularly advantageously placed business premises.

(a) There is no doubt as to the integrity of the Seattle Brewing and Malting Co., its officers, and employees. The question is to what extent this probity could be treated as a business asset. The morals in trade of the management could be expected to have little influence on retail purchasers of beer but under normal circumstances might greatly affect wholesale distribution. The situation which prevailed in Washington in 1913 and previous years was unusual and operated to nullify this influence. In Washington beer was distributed through a licensing system under which the brewer would set up the saloon or acquire the license of a saloon and the "captive" saloon would then dispense only the beer of the license-holding brewery. Under these circumstances any favorable relations between brewer or brewer's representative and saloon-keeper would have no effect on the sales of

Petitioner's Exhibit No. 41—(Continued)

beer. Their interests would be identical regardless of their mutual regard or esteem. There would be no opportunity for favoring one wholesaler to the prejudice of others.

(b) As indicated above, no amount of esprit-de-corps and readiness to perform special services for wholesale purchasers by officers or employees of the Seattle Brewing and Malting Co. would [782] have any great influence on the company's dealings with its "captive" outlets. The latter were committed by self-interest to push sales of the company's product.

(c) The liquor trade in Washington was highly competitive during the period in question. Seattle Brewing and Malting Co. did not enjoy a monopoly position in regard to beer sales. Two readily recognized brands sold in competition with Rainier were Tacoma and Olympia beer.

In this connection it is significant to note that while the company did not have a monopoly of the beer market, it did have a monopoly of Rainier beer manufacture and distribution and on this fact, its prosperity depended. This statement sounds almost too obvious but as an expression of the economic doctrine of "monopolistic competition" it has important implications. The owner of a valuable goodwill property like Rainier beer enjoys a highly advantageous position amounting to a monopoly of a certain sector of the market. His habitual customers are just as unavailable to his competitors as they would be if he were the only concern produc-

Petitioner's Exhibit No. 41—(Continued)

ing the article sold. This advantage in the case of Rainier derived exclusively from the ownership of the widely known trade name. All the energies of the company's promotional and advertising staff were devoted to the development of this very quasi-monopoly.

(d) There is no evidence to indicate that the saloons selling Rainier beer exclusively enjoyed consistently favorable locations.

It has already been pointed out that the liquor business in Washington was highly competitive. In heavy beer-consuming sections there might be saloons on all four corners of a given street intersection, each selling the beer of its license-holder. The advantage enjoyed by the saloons selling Rainier beer was not one of location but, as noted above, of possessing the exclusive right to sell Rainier beer.

It must be admitted that the Seattle Brewing and Malting Co. did occupy a strategic location for the manufacture and distribution of beer within the State of Washington in competition with breweries operating outside of the State. This advantage derived from the very fact that the company conducted its operations within the State and was no greater than that possessed [783] by its intra-State rivals. Conversely, Seattle Brewing and Malting Co. suffered from its geographical position in its out-of-State business.

There is no suggestion in the foregoing analysis that the value of the Seattle Brewing and Malt-

Petitioner's Exhibit No. 41—(Continued)

ing Co. divorced from the trade name of its product would have sunk to the salvage value of the plant. On no account need this have followed. The calculations shown in Section (1) above are predicated on the assumption that the given management and plant could have continued indefinitely to earn the very substantial return of 8% on the investment in the tangible assets.

It has been shown that the accepted goodwill factors did not contribute in any way to the earnings of the Seattle Brewing and Malting Co. above and beyond the normal return to be reasonably expected by an average business concern. It follows by process of elimination that the excess profits were earned by the trade name Rainier beer and therefore the total value of the capitalized excess profits, $1,206,213.36, applies to that trade name.

(3) The third step in determining the goodwill value of the trade name Rainier beer is to ascertain what value, if any, accrued to the name which is not included in the calculations of the first step (i.e. which did not necessarily contribute to the excess earnings of the Seattle Brewing and Malting Co.). This value should then be added to the valuation figure already determined for the trade name Rainier.

One factor augmenting the already high transferable value of the trade name is found in the extraordinary advantage enjoyed in the beer market by the owner of a well-known trade name for his product. Perhaps the greatest single difficulty en-

Petitioner's Exhibit No. 41—(Continued)

countered in the brewing business is the difficulty of breaking into the market for the first time. The newcomer finds an undue weight of sales inertia to overcome at the outset, primarily because of the tendency of the public to continue in its old well-established habits.

The value of an established trade name is, in effect, a minimum demand value. It is a virtual guarantee that a certain volume of business can be expected.

The minimum demand value of the name Rainier was undoubtedly a major factor in the hire and subsequent purchase of the name in 1935-37 by the Emil Sick organization when they were entering the brewery business in the State of Washington. [784]

No formula exists to measure the value of this aspect of trade name goodwill. Its monetary value can only be determined at the time of sale by the operation of the respective bargaining power of buyer and seller and even then extraneous factors tend to enter. This element of goodwill value could very easily persist even if there were no excess profits and might conceivably still obtain if the company were operating at a loss.

In the present case, there are two possible treatments of this type of goodwill: (a) An estimated value of $300,000.00 may be ascribed to this minimum demand value. (b) The undetermined value of the minimum demand may be set off against some equally undetermined and intangible factor or combination of factors which might tend to reduce the

Petitioner's Exhibit No. 41—(Continued)

goodwill value of the trade name Rainier beer already calculated.

From the subsequent discussion it will be readily seen that the former alternative is the more appropriate here since no comparable adverse factor appears to force down the goodwill value. This brings the goodwill value of the trade name Rainier beer on March 1, 1913, before deductions, to a total of $1,506,213.36.

(4) The fourth step in determining the goodwill value of the trade name Rainier beer is to find out whether there were any factors tending to reduce the value so far determined $1,506,213.36, $1,206,-213.36 plus the minimum demand value $300,000.00). These should be evaluated and deducted from the valuation figure.

Two possible factors might be suggested in this connection: (a) The potential threat of local prohibition in Washington on March 1, 1913. (b) The fact that the Seattle Brewing and Malting Co. carried on part of its business outside of the State of Washington and might have developed goodwill for Rainier beer in the course of so doing which would have to be subtracted from total goodwill to determine the value in Washington.

(a) It might be contended that the goodwill value of the name Rainier beer was impaired on March 1, 1913, by the potential threat of local prohibition.

It is an easy thing for us in 1942 to look back with the wisdom of hindsight and point out that in

Petitioner's Exhibit No. 41—(Continued)

the spring of 1913 local prohibition was only three years off in the State of Washington. [785] It is likewise easy to proceed from that point and assert that if there was not a general realization of the imminence of local prohibition at that time there ought to have been!

Such a line of reasoning is an oversimplification of the true situation. There is no need to look for contemporary evidence that local prohibition was going to go into effect. We know that already. What does apply to the discussion is evidence as to whether a considerable number of rational persons living in Washington on March 1, 1913, thought it was soon to go into effect or not.

Considerable weight must be attached to the reactions and behavior of the Seattle Brewing and Malting Co. in contemplation of the threat of prohibition. The management of this concern was in the hands of a prudent and conservative group not given to deluding themselves or running unnecessary risks in the operation of a $5,000,000.00 business. The officers of the company were quite aware of the talk then current about local prohibition. Agitation of this sort had been a threat to the liquor business ever since the Civil War. There was nothing in either the tone or volume of the demands of the drys on March 1, 1913, to suggest any greater cause for alarm than heretofore. Accordingly, in the course of the fiscal year ended June 30, 1913, the management of the Seattle Brewing and Malting Co. authorized the expenditure of $128,050.72 on

Petitioner's Exhibit No. 41—(Continued)

permanent plant improvements. It happens that the outlay was largely justified by the earnings of the years 1913, 1914, and 1915, but it would hardly have been incurred had local prohibition appeared imminent.

Significant as the reactions of a specific concern obviously are, a broader basis should be found for generalization. This raises the problem of how to find out what went on in the minds of a large body of persons thirty-odd years ago.

Some sort of questionnaire sampling method might be attempted. An objection to this is that with the normal human life span as brief as it is a great many of the persons who were of an age to be concerned with the prohibition question in 1913 are no longer available for questioning in 1942. A second objection is that it is not easy to remember what one thought thirty years ago. Zealots in both the wet and dry parties might recall their thoughts but they should be eliminated at the outset as unreliable since they were probably wishful thinkers in 1913. [786]

The method we have followed in attempting to sample public opinion on March 1, 1913, as to the imminence of local prohibition at that time is to consult the files of four representative Washington newspapers of general circulation. We have engaged research assistants to examine the editorials and the news stories of the Seattle Post-Intelligencer, the Seattle Time, The (Tacoma) Daily Ledger and the Daily Olympian (Olympia) for

Petitioner's Exhibit No. 41—(Continued)

every day of the years 1912 and 1913. The persons who conducted this survey were not informed of the purpose of their researches or the desirability of certain findings or otherwise prejudiced in advance in any way.

Their findings reveal that during the period in question the matter of state-wide prohibition was at no time a burning issue. Neither editorials nor news stories reflect more than tepid interest in the question in metropolitan Seattle. In the representative provincial centers of Tacoma and Olympia, the general issue was likewise a subject of minor concern. Only in the months of September, October and November, 1912, is any interest displayed in the liquor question and in those months our sources show that the interest was centered in the local option controversies in the outlying towns.

Our research people compiled statistics of the actual number of times the subject of local option or prohibition appeared in the newspapers. These figures are appended to this report, together with the resulting graphs (Appendix B). The most obvious facts shown by these monthly frequency distributions are: (a) The relatively few times the subject of prohibition is mentioned at all. (b) The interest shown in the local option elections in the fall of 1912. And (c) the particularly few references to the matter in the months around March 1, 1913.

It must be further noted that even the scanty references recorded include articles dealing with local option which had already gone into effect. This means that the question of complete state-wide pro-

Petitioner's Exhibit No. 41—(Continued)

hibition was even less in the public mind as reflected by the press than appears from the tables.

We conclude from this survey that the real agitation for state prohibition in Washington did not begin until after March 1, 1913, and there is no indication whatever that state prohibition was generally thought to be on its way at that date.

No deduction should be made from the goodwill value of Rainier beer because of the threat of prohibition. [787]

(b) The Seattle Brewing and Malting Co. earned the bulk of its profits within the State of Washington but a certain share was realized on sales outside of the State. Whatever goodwill was enjoyed by the company as the result of its out-of-State sales of Rainier beer should be deducted from the total goodwill value of the trade name.

The books of the Seattle Brewing and Malting Co. show an average net income within the State of Washington for the five years ended June 30, 1912, of $315,077.29 and a net income from out-of-State sales for the same period of $67,941.62. This means that 17% of the company's earnings were derived outside of Washington.

It might at first appear that the total value already calculated should be reduced by that percentage.

That reduction would rest on the assumption that the excess profits earned by Seattle Brewing and Malting Co. as the result of their use of the trade name Rainier beer were the same outside and inside

Petitioner's Exhibit No. 41—(Continued)

the State. The records reveal that this was far from being the case.

Here again, there is danger of oversimplifying. There can be no doubt that the goodwill value of the trade name Rainier beer was appreciably higher within its home State than elsewhere. It would be going too far, however, to say that Rainier beer had no goodwill outside and dismiss the entire question of an appropriate reduction of the total goodwill value. Rainier beer was not the cause of excess earnings outside of Washington but it still enjoyed a minimum demand potentially saleable to a new company entering the market.

Before attempting an evaluation of out-of-State goodwill we should note the factors leading to a disproportionately great intra-State goodwill. These are, in the order of their importance: (a) The geographical location of the plant already noted with the advantages of short haul distribution. (b) The many years' head start Rainier beer had in competing with concerns from outside. (c) The devotion of the greater proportion of its energies to advertising and building up trade inside of Washington, and (d) The action of local pride and the "buy at home" viewpoint. [788]

These constitute a formidable advantage for the company in its intra-State operations and the converse of (a) and (d) worked to its disadvantage outside.

Petitioner's Exhibit No. 41—(Continued)

The question of how much to evaluate the out-of-State goodwill brings us to another situation where arbitrary values must be given. Certainly, the upper limit of this value could not reach the 17% mark while the lower limit might easily fall below 5%.

A reasonable share of the total goodwill to be attributed to out-of-State business might well be 10%. Ten per cent of $1,506,213.36 is $150,621.33, leaving a final value for the trade name Rainier beer within the State of Washington on March 1, 1913, of $1,355,592.03.

Conclusion:

"The proof of the pudding is the eating."

The test of goodwill value is the amount it will realize when sold.

In 1935, the trade name Rainier beer was assessed by the Emil Sick organization at $1,000,000.00 and two years later, it was purchased by them at that figure.

The circumstances linking the 1913 value of the trade name with its 1935 value are briefly as follows:

Seattle Brewing and Malting Co. continued to realize substantial earnings through the year 1915 but in the following year local prohibition was adopted in Washington and this was superseded in 1918 by national prohibition. This legislation was ruinous to the brewing industry. The profits of Seattle Brewing and Malting Co. disappeared. Prohi-

Petitioner's Exhibit No. 41—(Continued)

bition in Washington lasted for eighteen years. During that time the company went through a reorganization.

In 1933, prohibition was repealed and the new company, Rainier Brewing Co., began the manufacture and distribution of Rainier beer. Rainier beer had not been sold for eighteen years but so favorable was the reputation of this beer that the demand for it survived the dry years. The new company began immediately to do a very large business manufacturing and selling Rainier beer. Two years later with the signing of the Sick contract the goodwill value of the trade name was determined, as noted above, to be $1,000,000.00. [789]

The goodwill value of the name Rainier beer in 1935 was patently much less than it had been during the years of consistently increasing prosperity before prohibition. The whole picture was more favorable for the company in every way in 1913. From this, it is obvious that the minimum value of $1,355,592.03 which we have determined to apply on March 1, 1913, errs, if at all, on the side of conservatism.

Appendices

A. Table of net earnings, 1908-1912.

B. Table showing the number of references to local option and State prohibition in Washington in 1912 and 1913 compiled from newspapers.

Graph based upon these statistics. [791]

Petitioner's Exhibit No. 41—(Continued)

APPENDIX A

Table of Net Earnings, 1908-1912:

Year	Total net income	Net income from State of Washington	Net income from outside of Washington	Percentage of net income from outside of Washington
1908.....	$ 371,015.65	$ 292,353.40	$ 77,662.25	20.932%
1909.....	334,704.47	298,387.80	36,316.67	10.850%
1910.....	341,244.24	303,160.48	38,083.76	11.160%
1911.....	403,144.56	326,880.82	76,263.74	18.917%
1912.....	464,985.62	353,603.94	111,381.68	23.954%
Total.....	$1,915,094.54	$1,575,386.44	$339,708.10	17.738%
Average	$ 383,018.90	$ 315,077.29	$ 67,941.62	17.738%

Petitioner's Exhibit No. 41—(Continued)

APPENDIX B:

Tables Showing the Number of References to Local Option and State Prohibition in Washington in 1912 and 1913 Compiled from Four Leading Newspapers by Months:

1912	Seattle P. I.		Seattle Times		Tacoma Ledger		Olympia Olympian		Total		
	News	Editorial	News	Editorial	News	Editorial	News	Editorial	News	Editorial	Grand Total
Jan.	1		2		5	1	2		10	1	11
Feb.	1		3		1	1	1		6	1	7
Mar.	2		4	1			1	1	7	2	9
Apr.			7	1	6	1	2		15	2	17
May		1	2		5		5		12	1	13
June			1		4		3		8		8
July	2		5	1	5	2			12	3	15
Aug.			5		9		2		16		16
Sept.			9		22		8		39		39
Oct.	8		2	1	3		14	1	27	2	29
Nov.			2	2	27		7	3	36	5	41
Dec.	3		2		9		1		15		15

Petitioner's Exhibit No. 41—(Continued)

1913	Seattle P. I. News	Seattle P. I. Editorial	Seattle Times News	Seattle Times Editorial	Tacoma Ledger News	Tacoma Ledger Editorial	Olympia Olympian News	Olympia Olympian Editorial	Total News	Total Editorial	Grand Total
Jan.	2				3		3		8		8
Feb.	2		5				3		10		10
Mar.	1		2		1		1	1	5	1	6
Apr.			1		6				7		7
May			1		5		1		7		7
June	3		2	10	2				7	10	17
July	1		1		2				4		4
Aug.		1		1						2	2
Sept.	2		2	2	2		3		9	2	11
Oct.	6				6		1		13		13
Nov.	3		1		2				6		6
Dec.	7		2	1	9		3		21	1	22
Total	44	2	61	20	134	5	61	6	300	33	333

RESPONDENT'S EXHIBIT B

—1,500,000 live in saloonless territory. There are ninteen incorporated cities in the State—eight cities are "dry." Of the 161 incorporated towns, 145 are "dry."

Two years ago the Anti-Saloon League endeavored to secure a state-wide enabling act from the legislature which would have allowed the people of the State to vote on the question of state-wide prohibition; only twelve out of forty senators voted for the measure.

The legislature will again be asked to pass an "Enabling Act" at the next session, January, 1912. The measure will secure a much larger number of votes in the senate than it did two years ago, and is likely to secure a majority. The house will pass the bill without question. A fair expression will show Virginia "dry" by a good majority.

WASHINGTON

The local option law of Washington, which provides for a vote on the liquor question in towns, cities and the unincorporated portions of counties as separate units, has been in operation since 1909. Thus far 129 elections have been held; eighty-four of these elections have resulted in "dry" victories, while forty-five have resulted in "wet" victories. As a result of these elections 360 saloons have been abolished and 71 per cent of the area of the state has been made "dry." At the present time the

unincorporated portions of nineteen counties are without saloons, four counties are entirely "dry" and seventy-one municipalities, including fifteen county seats, are under no-license.

There are more people living in "dry" territory in the State of Washington at the present time than the entire population of the State numbered in 1900.

Most of the railroads have discontinued the sale of intoxicating liquors and the steamboat companies are rapidly following the example of the railroads.

Between 1,400 and 1,500 saloons are operating in all parts of the State. The saloons of Seattle are confined by a city ordinance to a very small portion of the city's area.

One of the most important and far-reaching decisions of the State Supreme Court in recent years is that just handed down in the case of State vs. Falkenstine.

Falkenstine, as steward of the steamboat "Kennedy," plying between Seattle and Bremerton, conducted a bar on the boat without having a license from the Kitsap county authorities. Twice convicted, he appealed to the Supreme Court, which conviction was affirmed, the court holding that it was necessary not only to have paid the $25 license fee to the State and the $25 tax to the United States, but also to secure a license from the county commissioners.

The significance of this decision will be much more apparent when it is understood that it will compel every steamboat plying [802] on any of the

waters within the State and every dining and buffet car within the State to have a city, town or county license for each and every city and county within which sales are attempted to be made. The defendant argued that such a conclusion practically meant the prohibition of the sale of liquor on dining cars and steamboats, but the Supreme Court said the legislature had the right and power to do this, and refused to free the defendant.

WEST VIRGINIA

The legislature of 1911 by a majority vote in both houses, submitted to the people an amendment to the state constitution providing for state-wide prohibition. This amendment will be voted upon November, 1912. The vote by which the bill providing for constitutional prohibition was passed, showed a majority of three in favor of the measure in the senate and but nine adverse votes in the house.

Thirty-nine of the fifty-five counties in West Virginia are without saloons. The total "dry" area of the State is 21,983 square miles, the "wet" area being only 3,270 square miles. The population of the "dry" territory of the State is 889,196, while the population of the "wet" territory of the State is 321,878.

The present anti-liquor laws of West Virginia leave the liquor question in the hands of the municipal councils and the county courts. The exclusive power of granting saloon licenses, however, is in

the county courts, according to a recent decision by the State Supreme Court, as a result of which Point Pleasant, West Virginia, which for many years has been a liquor strong-hold, is now under no-license.

WISCONSIN

The last legislature in Wisconsin defeated the county option measure but passed a number of good restrictive measures, among which may be named the one forbidding the sale of intoxicating drinks at public auctions, another forbidding anyone in a state of intoxication to appear in a public place, another excluding intoxicated passengers from steam railroads or interurban trains and another prohibiting the drinking of intoxicating liquors in any smoking car, parlor car or day coach of any train.

Under the municipal local option law considerable territory has been made "dry." Some 860 communities, towns, villages and cities, are without saloons, and more than 600,000 people live in no-license territory. Milwaukee has 2,138 saloons. There are about 8,415 saloons operating in the entire State.

In 1904 fewer than 300 places were "dry," so that the "dry" territory of the State as well as the population living in "dry" territory has more than doubled in eight years. Fifty-five per cent of the area of the state is under no-license. The main

RESPONDENT'S EXHIBIT F

AIMING AT NATIONAL PROHIBITION

We have time and again pointed out to our members that the Anti-Saloon League was aiming at National Prohibition under the make-shift of local option. Elated over the passage of the Webb bill, it has at length frankly declared its purpose. That such program meets with full sympathy in the general body of temperance extremists is clearly evident from the following editorial expressions in the Michigan Christian Advocate. Under the caption "Amend the Constitution Once More," this paper states:

"Whether the Webb-Kenyon anti-shipment liquor bill, which is now federal law, be found constitutional or not, and whether, in its present form, it will be effectively enforced or not, it may be well for the temperance people of the United States immediately to inaugurate a movement to amend their Constitution prohibting utterly the manufacture and sale of intoxicating liquors throughout the nation.

"We understand that the Anti-Saloon League of America has already declared itself in sympathy with this idea, and no doubt other temperance organizations would gladly do so.

"The fight to secure an amendment to the Constitution would, however, not be an easy one. Liquor is no longer a necessity, but millions of people consider it a very desirable luxury, and they would

contend with bloody vehemence against any measure to prohibit it as effectively as a federal constitutional law would do.

"But even though years, or decades, or even whole generations, should be required to carry the measure through, the educational influence of such a campaign would be wholesome from the start, and the mere possibility of reaching such a goal would be a constant inspiration to every temperance worker in the country."

Dr. Purley A. Baker, president of the Anti-Saloon League of America, has made the following official statement with regard to the "campaign for national prohibition":

"The league confines its efforts to law enforcement and sentiment-building where that is the only policy public sentiment will sustain. It is for local prohibition where that policy meets the requirements of the most advanced public demand. It always has favored the adoption of State and national prohibition just as [810] quickly as an enlightened public conscience warrants. We believe the time is fully ripe for the launching of a campaign for national prohibition—not by any party or parties, but by the people. This does not mean we are to relax our efforts one iota for law enforcement, local prohibition, and prohibition by States, but it is a recognition of the fact that the task begun more than a hundred years ago should speedily be completed. . . .

"The time for a nation-wide movement to outlaw the drink traffic is auspicious. Organization is now established and in operation in all parts of the country. The forces that definitely oppose the traffic are in accord as at no time in the past. The moral, scientific and commercial aspects of the problem are being more intelligently put before the public than hitherto. The narrow, acrimonious and emotional appeal is giving way to a rational, determined conviction that the traffic being the source of so much evil and economic waste and the enemy of so much good, has no rightful place in our modern civilization.

"We appeal to every church, to all organized philanthropies and to every individual of every race and color, who loves his country and his kind, to join in this crusade for a saloonless nation. We depend for success upon the same leader who commanded Moses to 'speak to the Children of Israel that they go forward'."

The Anti-Saloon League of America has called a national convention to meet at Columbus, Ohio, next November, whose object is to inaugurate a new campaign for the prohibition of liquor and the liquor business in the United States by means of a "dry" amendment to the Constitution.

An amendment to the Federal Constitution prohibiting the sale of liquors is now the plan of the Anti-Saloon League of America, according to a statement issued by the League of Illinois. The statement in part follows:

"A resume of the 'wet' and 'dry' situation after municipal elections of the entire nation, April 17, 1913, shows that of the 2,973,890 square miles, the saloon is now outlawed in 2,132,746 square miles. There are thirty-two States in which the combined number of saloons is less than the number in Chicago alone. 46,029,750 people are now living under no license. There are more than 500 cities having a population of 5,000 or more, and almost 200 cities having a population of 10,000 or more, in which saloons have been abolished. [811]

"If the thirty-two States in which the combined number of saloons is less than the number in Chicago alone, together with four others, ratify an amendment to the Federal Constitution, the liquor traffic in this country will be at an end. The Anti-Saloon League is laying definite plans to effect the passage of such amendment."

The conservative Independent (New York) makes this comment:

"The progress of prohibition is seen in the fact that there are now in this country more than 500 cities and towns with a population of 5,000 or more in which the sale of alcoholic liquors is forbidden, and nearly 200 of them have over 10,000 population. There are nine States with a population of nearly 15,000,000 whose people have adopted prohibition. They begin to talk of a prohibition amendment to the Constitution, but the time for that is not yet, although nearly the last law under President Taft was to aid prohibition States to prevent the introduction of the poison. And yet people still

say, what they say of the social evil, that the alcoholic evil has always existed, always will exist, and that the only way is to segregate it, localize it in poor quarters, and shut it out of the respectable residence districts."

In this connection it is interesting to notice

WHAT PROHIBITION HAS DONE FOR TENNESSEE,

according to the Nashville Democrat. That journal reads the following vigorous lesson on the moral and political evils which have attended prohibition in Tennessee:

"Tennessee has now had three years of prohibition and fusion. A little over three years ago the laws went into effect closing down distilleries and breweries, destroying the large values which had been invested in them, and extending prohibition to the large cities. Since these confiscatory and prohibitory statutes were enacted, what has happened? To what conditions has the State been reduced? The principal cities, Republican and Democratic—that is to say, Knoxville, Chattanooga, Nashville and Memphis—have been and now are "wide-open" towns. The traffic has not diminished and the consumption of liquors has increased. As a "prohibitory" measure, the statute is an acknowledged failure, and why? Because the people of Tennessee are not in favor of State-wide prohibition. They do not want these laws enforced, and therefore, they are not enforced. But while the laws are dead [812] letters, save a short, spasmodic

intervals, they have brought about conditions that were unknown under Democratic and anti-State-wide rule. There is a growing disregard for law, because men are accustomed to observe its non-enforcement. While the authorities of the cities can close the open saloon, they cannot suppress clandestine traffic, and, making the best of a bad condition, they overlook the open saloon; but the power to close an open saloon and break up the proprietor of an expensive establishment is a power that even an honest but ambitious officer can exert with tremendous political effect, and it is a power which a dishonest officer can use to suppress and to 'graft'. It is a condition which breeds the worst kinds of political machines, and the strongest of city 'bosses'."

ANTI-SALOON LEAGUE TROUBLES

The Prohibition Party has taken the field against the Anti-Saloon League. A war of extermination, with the State of Maryland as the beginning of the conflict, is shortly to be waged between these two organizations. Eugene Chafin, who is considered the ablest speaker and campaigner among the Prohibitionists, is to lead the forces under the Prohibition Party. He has selected Maryland as the beginning of his campaign. He purposes to challenge the State superintendent of the Anti-Saloon League to show cause why that organization should exist at all. In a recent statement Mr. Chafin publicly declared:

"The Anti-Saloon League of Maryland is merely an organization whose business it is to mulct money from church-going people. Similar organizations have existed in other parts of the United States. They disbanded when I got after them, and I drove their superintendents to work. Instead of living off the fat of the land, they had to leave the places in which they were operating and get a job somewhere else."

After Mr. Chafin disposes of Anderson he threatens similar campaigns in New Jersey, Pennsylvania and New York, where the League has been more or less a political nuisance. . . .

At the Detroit Methodist Episcopal Conference, held at Alpena, Mich., on September 13th, 1912, a memorial was presented, urging that body to sever all connections with the Anti-Saloon League of America. The memorial, which set forth various damaging charges against the League, was vigorously supported but failed to influence a majority of the delegates.

The Western Yearly Meeting of Friends, a church organization of Indiana, lately voted to sever relations with the Anti-Saloon League.

A DRASTIC PROHIBITION LAW

The West Virginia prohibition law, which goes into effect July 1, 1914, is the most drastic that has been written in the statutes of any State.

The word "liquors" is construed to embrace all malt, vinous or spirituous liquors, wine, porter, ale, beer or any other intoxicating drink, mixture

or preparation of like nature; and all malt or brewed drinks, whether intoxicating or not, shall be deemed malt liquors within the meaning of the act; and all liquids, mixtures or preparations, whether patented or not, which will produce intoxication, and all beverages containing so much as one-half of one per centum of alcoholic by volume, shall be deemed spirituous liquors.

Under the provisions of the new law private consumers of whisky or other alcoholic drinks are not permitted to have more than half a pint of such intoxicants on their premises at any time and this amount can only be obtained as medicine on a physician's prescription. Only one prescription can be filled for each examination by a physician, who must also make affidavit that the person receiving such prescription is not known to be addicted to the use of intoxicants or narcotic drugs. The new law carries with it for any violations a fine of from $100 to $500 for the first offense in addition to a jail sentence of from 30 days to 6 months. The second offense is to be prosecuted as a felony and carries a much heavier fine and penitentiary sentence of from one to five years. Clubs are not exempt and churches are permitted but a small quantity of wine for sacramental purposes.

The express companies and common carriers are restricted to the amount of liquor and alcoholic stimulants they carry into the State. The records for such transportation must be kept in separate books and open to officers of the law. These officers do not have to secure search warrants, but can

forcibly enter any building under suspicion and make an investigation. Drug stores are also included and are not permitted to import, handle or sell patent medicines containing more than one-half of one per cent of alcohol. [814]

The people of West Virginia will, however, have to pay the fiddler for their folly. Governor Glasscock calls attention to the need for additional taxes to make up the deficiency in public revenues that will follow the extinction of the licensed saloon.

The loss of liquor revenue is particularly unfortunate at this time, because of the fact that the old litigation known as the "Virginia Debt" is now in the United States Courts, and should a decision be rendered against the State of West Virginia, the amount of the judgment rendered will be somewhere from ten to twenty-five millions of dollars.

THE COLUMBUS CONVENTION

At its National Convention, held at Columbus, Ohio, in November, the Anti-Saloon League adopted a declaration of principles, from which we quote the following:

"It is wrong for the Government to accept revenue from the liquor traffic or to issue liquor or dealers' tax receipts in 'dry' territory.

"In order that Federal Legislation relating to the inter-State shipment of intoxicating liquors may be made effective, we urge upon the legislators of the various States the passage of laws prohibiting common carriers from transporting and delivering such intoxicating liquors into Prohibition territory.

"We urge Congress to enact a law forbidding the use of the mails to the liquor traffic for advertising or soliciting the purchase of intoxicating liquors in such territory.

"We declare our settled conviction that license and regulation are inadequate to exterminate the liquor traffic. The license system, instead of eliminating the evils of the traffic, has become its last and strongest fortress.

"We, therefore, declare for its national annihilation by an amendment to the Federal Constitution which shall forever inhibit throughout the territory of the United States the manufacture and sale, and the importation, exportation and transportation of intoxicating liquors to be used as a beverage."

Included in the declaration was a pointed rebuke to Secretary Bryan for his interference in the Maryland Senatorial election, expressed as follows.

"We declare it to be the sense of the League that when officials of the National Government interfere in an election in a State, the people have a right to expect them to take care that a candidate for whose election they intercede upon National issues shall not be out of harmony with the convictions of the people upon moral issues in that State." [815]

RESPONDENT'S EXHIBIT H

be circulated which gives a year's time to vineyards. But this second amendment has no necessary connection and there is no guarantee that it will receive as many votes as the original amendment. But even if this concession of a year which was so grudg-

ingly given in the form of a second amendment should prevail, the time would be too short to be of any material advantage.

The Anti-Saloon people faced a practical dilemma. If they followed their best moral instincts and had the courage to oppose the present prohibition amendment on principle, they would have lost the support of every extreme and fanatical prohibitionist and would have been subject to much misunderstanding amongst their supporters. On the other hand, if they came out and supported the present drastic prohibition law they would alienate the sympathy and support of that large body of rational men who believe with them that the saloon is an evil but who are unwilling to join hands with extreme and violent prohibitionists who will hesitate at nothing, even a moral wrong, to accomplish their purposes. In this dilemma the Anti-Saloon forces have been obliged to join hands with its more extreme and aggressive supporters and to sacrifice to some extent a great body of sympathizers who cannot follow them in this extreme program.

The question which this amendment presents to the California voter is not the right or wrong of prohibition as a principle; to present it as such is sophistical misrepresentation. The amendment is in itself immoral and it does not deserve and it will not receive the support of those prohibitionists who are unwilling to serve their cause, if, indeed, it be service, in the long run, by dishonorable means.

STATE WIDE PROHIBITION IN CALIFORNIA

By S. W. Odell

President of the California Dry Association

People who really believe in temperance today are agreed that there is but one remedy for the evils of intemperance. That remedy is the total destruction of the liquor traffic. A man is a "dry" or a "wet" as he lines up on this one issue—if he believes in the prohibition of the manufacture, the sale, the giving away, the transportation and the importation of alcoholic liquors to be used for other than medical or mechanical purposes, he is a "Dry"; if he argues against this plan, he is at once dubbed "Wet". It is not now a question of political party. All the prohibition fights ever won in the United States have been won by a non-partisan or omni-partisan campaign. Parties have endorsed the movement in various states. The prohibition party has been a teacher and a preacher and has won its victories indirectly. Perhaps the organizaton to which most of the success in anti-liquor campaigns is due is the Women's Christian Temperance Union, whose constant efforts have been directed toward having scientific temperance taught in schools. The Anti-Saloon League has accomplished wonders in local option and state-wide fights. Good Templar lodges have been constantly at work. The churches, with two or three exceptions, have fallen into line and are fighting for the total destruction of the

traffic. Public sentiment has so crystallized that a wave of prohibition sentiment is rolling over the country and more than half of the United States is "dry". It is predicted that within six years the United States will adopt an amendment to its Constitution, totally prohibiting the traffic.

LICENSE INEFFECTIVE

The object of all legislation should be to stop the evils of alcoholism, not to trim it up and make it respectable. The more respectable an evil thing is made, the more attractive to man it is. This holds true with regard to every passion. Nor can the object desired be obtained by limiting the number of saloons in a city. Just as much liquor can be and is sold in one or two places thus given a monopoly as in a dozen. Segregating the saloon in certain prescribed portions of a city does no good but rather is an evil; for then the householder who will not endure the saloon in his neighborhood [822] shuts his eyes to the evils it does and thus fortifies its position with the public.

The sole object of true temperance legislation should be to stop drinking. In order to do that, it must strike at the source and stop the manufacture of it. In order to make effective "dry" laws it must stop the importation as well as the manufacture. Alcohol is a poison just the same as opium, cocaine and other deadly drugs and the law must deal radically with it. No halfway measures will accomplish anything worth while.

DOES PROHIBITION PROHIBIT?

That is the question over which many well-meaning voters stumble. It is true that in some states, where prohibition laws have been tried, it has not totally prohibited the traffic. But that was due to two main causes. First and foremost, the interstate commerce law before the passage of the Webb-Kenyon Bill by Congress permitted shipments of "wet" merchandise in original packages from one point outside of a "dry" state to the consumer inside the "dry" state. The express companies did a wonderful trade in liquors. Once the liquor was received by the consumer in the "dry" state, he could secretly distribute it to his friends and maintain blind pigs and blind tigers to the disgust of the voter who then would revert to the old license system, on the theory that it would be well to have the license money to take care of liquor's wrecks, since under the law wrecks continued. But the Webb-Kenyon law passed by Congress permits "dry" territory to forbid the importation of liquors. This will effectively stop the chief stream of liquor. Another reason was that it was found difficult to obtain juries to convict offenders against liquor laws. Some "wet" friend would almost invariably get on the jury and "hang" it. He ought to have been hung instead. Now the remedy by injunction and abatement is being used, and, as this appeals to a judge only, and judges generally regard their official oaths, it has been found effective. The proposed prohibitory amendment to the Constitution of Cali-

fornia, to be voted on November 3rd, contains provisions prohibiting importation and providing for the remedy by injunction as well as prohibiting the manufacture, sale, giving away and transportation of liquors. It is conceded by the liquor fellows that it will if enacted destroy the liquor traffic in California.

THE RIGHTS OF GOVERNMENT

Advocates of so-called personal liberty forget that in dealing with the liquor traffic we are dealing with a business the same as every municipality does when imposing a license on vehicles used in express business, or upon automobiles, or upon mercantile establishments. It is conceded that the government has a right to license the liquor traffic. In conceding such a right the opponent of prohibition concedes the right of the government to interfere with the traffic. If the government has the right to prohibit the sale of liquor, unless a man pay a certain license fee, it surely has the right to go a step further and prohibit the sale entirely, and, of course, the manufacture and transportation of liquors. No one will contend for a moment that the government has not the right to prohibit the sale of opium and the sale of cigarettes to children. Liquors are in the same class. We take the advanced step that no one has any right to be using alcoholic drinks either moderately or immoderately and thus to destroy his own efficiency, to wreck his body and mind, to produce as a consequence of his own dissipation children who are weak in body or mind, and thus

cast upon society the task of supporting the inefficient, the sick and the insane and the burden of dealing with criminals made so by alcohol. Personal "license" is the word these opponents should use instead of personal "liberty." There is absolutely nothing in such an argument.

THE RIGHTS OF PROPERTY

As to the destruction of property-values and the interference with business, our opponents are in no worse position than any manufacturing establishment affected by changes in tariff laws, for example. The burden of citizenship imposes upon all business men the necessity of surrendering their affairs to the control of the majority. The Republican manufacturer argues strenuously against free-trade laws and can demonstrate to his own satisfaction, and generally to the satisfaction of the majority, that tariff laws are better for business in his particular line. On the other hand, the Democratic statesman maintains that the tariff laws benefit only the few and can [823] demonstrate also to his satisfaction and often to the satisfaction of the majority that he is right. Whenever the majority speaks the minority must bend. Whenever we can persuade the majority that the liquor traffic, while it may be a profitable business for the few, is detrimental to the many and to society in general, then, bending to the will of the majority, the minority favoring the traffic must suffer the consequences. No business should be maintained which injures any one citizen in his health or happiness. Financial considerations

must be disregarded when weighed in the scale against the human body and the human soul.

THE CASE OF THE GRAPE-GROWERS

As to the wine-grape in California, a great noise has been made by some wine-makers and agents of the liquor traffic who are fighting California "Dry" over the grape-growers' shoulders. Some of the men who are going about trying to convince the public that a great and lucrative industry is about to be destroyed talked very differently two years ago before the "dry" campaign began. The temperance advocates have seized upon the utterances of these valiant defenders of the liquor traffic and published them in several bulletins to their utter confusion, comparing what they said and wrote two years ago with what they are saying now. What they said two years ago appears in the Bulletins of the State Commission on Horticulture, which can be found in every public library. These bulletins contain statements to the effect that the wine-grape grower is selling his grapes at cost and receiving nothing for his time and expenditure of energy; that since 1907 the average vineyards of the interior valleys have been run at a financial loss; that there must be an influx of immigration from Southern Europe if the vineyardists are to hope to compete successfully with France, Italy, Germany, Spain and Portugal in the wine markets of the world.

Reports show that for every million dollars invested in the manufacture of lumber, five hundred

and seventy-nine men are employed; for every million dollars invested in the manufacture of clothing, five hundred and seventy-eight men are employed; for every million dollars invested in the manufacture of leather products, four hundred and sixty-nine men are employed, while for every million dollars invested in the manufacture of liquors, only seventy-seven men are employed.

If the working men overthrow the traffic in liquors by their votes they will force the investment of the money now giving employment to a mere handful into channels where it will employ about five times as many men.

THE AMENDMENT

It is admitted that the contest in California will be a close one. The temperance forces are united under the leadership of the California "Dry" Federation. The initiation of an amendment fixing the time when the prohibitory law shall go into effect at February 15, 1915, so far as the sale of liquors in the state is concerned, and at January 1, 1916, so far as the manufacture and export of liquors is concerned, thus giving the laborers ample time to get new jobs and the manufacturers of wine-grape products time to change their business and investments, has made probably fifty thousand votes for the "drys" and given a new impetus to the work. One hundred days from November 3rd will be ample time for the retailers to close out and get into a better business and fourteen months will enable the grape growers to make arrangements to raise other

crops and give the breweries, distilleries and wineries time to change their buildings into warehouses, pickle, vinegar or grape-juice factories and generally to rearrange their affairs so as not to suffer much financial loss. They must get out some time and if they were given five years they would not begin to quit until almost the end of the term. It is conceded that one year is as reasonable a time as could be expected to allow an economic change for the better. [824]

THE ALLISON PEARLS

A Lanagan Story

By Edward H. Hurlburt

Author of: Lanagan Amateur Detective: The Jerroldson Case

Illustrated by Arthur Cahill

Constance Allison is socially and financially the most interesting and conspicuous figure among the merry masked dancers at a Mardi Gras ball in San Francisco. Heiress of the Allison estate, one minor asset of which is the magnificent Allison hotel where the Mardi Gras is being celebrated, she wears for the first time since her mother's death the family's most treasured heirloom, a string of priceless pearls. Suddenly she misses them from her neck and says to her escort, Sterrett Masters, "See that no one leaves the hotel!" Masters notifies the house detective, and Chief of Police Leslie himself arrives with his men. An exciting scene follows in the

hotel's private office when the Chief sharply questions Masters and Raymond Winkeppner in the presence of Miss Allison and her friend Miss Ysobel Cadogan, fiancee of Winkeppner. Throughout, Lanagan, star reporter for a morning paper, has been a shrewd observer. He decides to take a hand in the detective game, now keenly on, for the capture of the pearl thief. Meanwhile the Chief, searching Winkeppner and Masters, finds a pearl in the latter's pocket. To save Masters, whom she loves, Miss Allison denies that the jewel is hers.

THE CLOUD OF SUSPICION

Miss Allison swayed for a moment, and then sank into a chair. With a rush of quick fury Leslie stepped before her.

"Do you mean to deny that this pearl is from your necklace?" His tone was sinister and threatening. Leslie was indeed no respecter of persons. The Allison connections, financial and political, were powerful enough to bring the mighty Leslie into jeopardy with the Police Commission. A smaller-calibered Chief may well have treated the Allison heiress more considerately.

"Do you deny it?" he repeated.

She looked directly up at him and then, as her self-possession quickly returned, examined the pearl again, critically.

"I do," she repeated. "It is not one of my pearls."

At a loss for a moment for words, Leslie could only glare down upon her. He wheeled upon Masters.

"I presume you'll be denying, too, that it's one of the Allison pearls?"

Masters did not look up. The pallor on his face had given way to a painful flushing. "I cannot deny that it has the appearance of one of the Allison pearls," he said.

"Where is your cloak-room check?" Leslie's voice was sharp with the eagerness of the crime quest.

"I live in the hotel," replied Masters.

"Then where is your room key?"

Masters handed it over. Leslie tossed it to Royan. "Go search his room," he said. Masters clenched his hands. Miss Allison sprang to her feet.

"Stop!" she cried, her eyes sparkling. "This farce has gone far enough! Who are

*This story began in the September, 1914, number.